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ABSTRACT

A study of legal education and professionalism conducted by an American Bar Association committee is examined along with the historical background of legal education and reform attempts, financial resources for stability and reform, and recommendations of the committee. The study rationale is explained, and aspects of prelegal undergraduate education, legal education, and postgraduate professional education that are amenable to reform are addressed. The literature review on legal education and the legal profession focuses on empirical findings and their implications for reform. The literature review addresses the following issues: questions about choosing legal education and a legal career, questions about law school, the background characteristics of law teachers, questions about transition from law school to law practice, and the extent to which the legal profession is stratified and the consequences. The problem of financial resources is considered because it is an important prerequisite to implementation of the committee's recommendations. The recommendations are designed to provide guidance for those making policy decisions affecting legal education and the legal profession. The committee recommended that there be a study of existing law school programs that augment the core curriculum, and that the skills training recommendations of the Cramton Task Force be supported and implemented. A bibliography of American Bar Foundation studies and a statement on prelegal education of the Association of American Law Schools (1953) are appended. (SW)

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LAW SCHOOLS AND PROFESSIONAL EDUCATION:

Report and Recommendations of the Special Committee for a Study of Legal Education of the American Bar Association.

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nments should be addressed to: Staff Director, Special Committee for udy of Legal Education, American Bar Association, 1155 E. 60th et, Chicago, Illinois 60637.

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December 1, 1980

To All Who Are Concerned With Legal Education:

This booklet contains the report and recommendations of the ABA Special Committee for a Study of Legal Education. The recommendations are based upon findings of research conducted by the American Bar Foundation and others.

Some of the Committee's recommendations are addressed to law schools; others are addressed to high school and college students contemplating entering law school; and others are addressed to the American Bar Association.

The Special Committee has submitted a report to the 1981 Midyear Meeting of the ABA House of Delegates containing three recommendations, the full text of which is contained in the accompanying report. The gist of these recommendations is:

1) That there be a study of existing law school programs which augment the core curriculum, such as trial and appellate advocacy, negotiation, interviewing and counseling, legal writing and legal drafting, and that there then be prepared and disseminated a detailed description of the content and format of such programs, with evaluative comment about their effectiveness and their cost.

2) That the skills training recommendations of the Cramton Task Force be supported and implemented, and

3) That there be continued research in the field of legal education, hopefully as a permanent component of the American Bar Foundation's research program, with special emphasis upon enlarging and building on the studies already done.

Comments about the report in this booklet are solicited. They should be sent to the Committee's staff director, at the American Bar Center address.

It is anticipated that the 1980-81 Association year will be the last year of existence for the Special Committee. However, the Council of the Section of Legal Education and Admissions to the Bar has stated the Section will continue to address the concerns of the Committee, to the end that the education of law students, which now is being done well, will continue to be improved.

Ronald J. Foulis

Ronald J. Foulis
Chairman

RJF:wp
6085H

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PREFACE

At the 1972 Annual Meeting, the House of Delegates adopted a resolution, upon recommendation of the Special Committee to Consider the Feasibility of Undertaking a Comprehensive Survey of the Legal Profession, as follows:

Resolved, That the American Bar Foundation be requested to make a study of legal education.

Further Resolved, That there be created a committee to be called the Special Committee for a Study of Legal Education consisting of seven members to be appointed by the President.

Further Resolved, That this Special Committee be directed to advise and assist the American Bar Foundation in devising and conducting such study and to report to the House on the progress and the results of the study.

Pursuant to this resolution, Robert M. Meserve, then President of the Association, appointed the first Special Committee for a Study of Legal Education, naming the Honorable LeRoy Collins, former Governor of Florida, as its chairman.

As its first order of business, the Committee asked the American Bar Foundation to work with the Committee in preparing an agenda for research about law school education. To this end, a state-of-the-art paper was prepared by ABF affiliated scholars Roger C. Cramton, then dean of Cornell Law School, and Barry B. Boyer, associate professor, State University of New York at Buffalo School of Law. This work, undertaken in consultation with the Committee, was published as "American Legal Education: An Agenda for Research and Reform" in *ABF Research Contributions* No. 1, 1974. It became the basis for a program of studies on legal education by the Foundation, which program was directed by Dr. Felice J. Levine, senior social scientist, and Professor Spencer L. Kimball, Executive Director of the American Bar Foundation.

Mr. Ronald J. Foulis, who served on the Committee throughout its existence, became chairman in August 1974. Richard W. Nahstoll of Portland,

Oregon, also served on the Committee throughout its existence. A complete list of Committee members and Board of Governors liaisons to the Committee is set forth below.

The Committee expresses its gratitude for the many law teachers, judges and practicing lawyers who contributed to the work of the Committee. In addition to those referred to above, special thanks go to Professor David F. Cavers, Harvard University Law School, who participated in all the meetings as Consultant to the American Bar Foundation; to Professor Patrick D. Kelly, University of Missouri School of Law, who served as the initial Reporter to the Committee; to Dean E. Gordon Gee, West Virginia University College of Law, and Professor Donald W. Jackson, Department of Political Science, Texas Christian University, who served as Co-Reporters during the latter stages of the Committee's existence and who were the draftsmen of the Final Report; to Donna Grill, a third year student at the West Virginia University College of Law, who served as research assistant to the Reporters; to Frederick R. Franklin, who served as the Committee's staff director throughout its existence; and Marjorie A. Krajewski, ABA administrative assistant who provided invaluable meeting arrangement and secretarial services to the Committee throughout its existence and particularly in the preparation of this report.

The Report is based upon studies conducted largely by the American Bar Foundation. Those who conducted that research met frequently with the Committee, as research projects were developed, during the course of the research, and during the stages of preparation of research reports. The Committee greatly appreciates the knowledge, integrity and dedication of these researchers. Their names are listed in the bibliography.

Finally, the Committee wishes to thank the officers of the American Bar Association and the members of the Board of Governors for their encouragement and support throughout this endeavor.

The Special Committee for a Study of Legal Education, 1972–1980:

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I. INTRODUCTION

The Special Committee for a Study of Legal Education was created by the American Bar Association in 1973 in response to continuing concerns of the Association regarding the adequacy of legal education in preparing students for the practicing bar. Certainly, when this Committee was appointed, there was considerable pressure on the profession, from a variety of sources, to reform itself. Much of that concern was directed toward the training of lawyers. But rather than make precipitous judgments regarding "reform" or respond with "quick-fix" solutions, the ABA appointed the Special Committee to advise and assist the American Bar Foundation in conducting studies to evaluate legal education. The focus of this research effort was to be empirical in contrast to the sometimes impressionistic commentaries and reports published previously. With data regarding "the expectations and experience of law students in the course of their legal education" and a comparison of that information with "the experience and judgment of practicing lawyers and teachers regarding legal education," the Special Committee, and others, would then be in a position to aid the analysis and resolution of "major policy issues concerning the methods and content of legal education."

Hindsight now reveals how ambitious was this charge. During the past several years much useful information has been gathered, but even a quick review of that information is enough to confirm that much more needs to be done. Yet there is now sufficient data from which reasonably informed observations and recommendations by this Committee regarding legal education can be made. Although this document is the Final Report of the Special Committee, it in no way should read as a "final solution" to the issues and problems confronting legal education. It presents some modest suggestions based upon available data, realizing full well that the Report is a beginning rather than an end.

A brief historical background of legal education with special emphasis on attempts at reform comprises section II of this Report. The efforts which preceded the Special Committee for a Study of Legal Education and histori-

cal events which spawned critical evaluation of legal education and of the legal profession explain the focus of the research conducted by the ABF and aid in an understanding of the task to be accomplished by the Special Committee.

Section III explains the rationale for this study of legal education and distinguishes it from those which preceded it. The charge to the Committee and the agenda for this research effort are set forth. Since legal education and professionalization represent only stages of a much broader and more complex process of socialization, this section places the objectives of this study in perspective and suggests contexts in which action can be effected, distinguishing these from contexts in which legal educators and lawyers have little or no influence or control.

Section IV, the major portion of the report, substantially reviews the available literature on legal education and on the legal profession. The research findings are organized and discussed as responses to questions reflecting the enduring issues identified in sections II and III. The focus of this review is on empirical findings, what they reveal about legal education and about the legal profession, and what they suggest for improvement.

In section V, attention is directed to an issue underlying all attempts to improve legal education—financial resources. It is one thing to identify the need for innovation and change but quite another to effectuate new programs. This report would be of little practical value to educators and lawyers without a realistic consideration of such an important prerequisite to implementation of the recommendations of this Committee. This section not only outlines the problem of financial resources, but also suggests alternative solutions.

The final section of the report presents the recommendations of the Special Committee, which are based on the data and information available to the Committee and discussed in the previous sections of this report. These recommendations are intended to provide guidance for those making policy decisions affecting legal education and the legal profession.

II. BACKGROUND

Despite the desire of the early settlers in America to break with many of the traditions and institutions of the mother country, the influence of the English legal system can be detected in the early training of lawyers in America. An aspiring young lawyer served an apprenticeship in an established lawyer's office where he "read" the law. This training, derived from the English model, commonly included observing what the lawyer did, "looking up" the law, copying legal documents, serving process papers, and reading a few treatises, such as Blackstone and Coke.

Dissatisfaction with the lack of standards for the quality of training under this apprenticeship system prompted Thomas Jefferson to reorganize his alma mater, the College of William and Mary in Virginia, and his law teacher and fellow revisor of the Virginia statutes, George Wythe, was elected to the newly founded Chair of Law in 1779. This event marked the initiation of university instruction in professional law in this country.[1]

The non-university-related private law school soon entered the scene and began to prosper. While maintaining the practical orientation of law office training, these proprietary schools systematized legal education, thereby overcoming the most serious disadvantages of the apprenticeship system.[2] The first and most famous of these proprietary schools was the Litchfield School founded by Judge Tapping Reeve in 1784.

Paralleling these efforts at systematizing legal education, bar associations and standards of admission to practice were being established. These bar organizations exercised considerable control over legal education and over admission to practice. However, with the election of Andrew Jackson to the presidency in 1828 came a sweeping egalitarian philosophy which sought to

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1. A. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 116 (1921) hereinafter cited as REED. For an enlightening discussion of William and Mary's claim that it is the oldest law school in the country, see J. MORPUGO, THEIR MAJESTIES' ROYALL COLLEDGE 196–98 (1976).

2. Gee and Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 B.Y.U.L. REV. 695, 726.

wipe out certain forms of elitism or aristocratic power. Since lawyers comprised a powerful political aristocracy at that time,[3] they became targets of Jacksonian Democracy, which destroyed the strong hold of the bar associations on legal education and on standards of admission to practice. As a result practically anyone of "good moral character," regardless of his knowledge of or training in the law, could be admitted to practice.[4]

It was after this period that the university-based law school gradually developed from the notion that the affiliation of a private or proprietary law school with a college or university would increase the respectability of the law school and enable it to confer a degree. In 1870, the date generally chosen to mark the beginning of the modern law school, Christopher Columbus Langdell was appointed Dean of the Harvard Law School, which was itself a combination of the proprietary and university influences, and during his tenure Harvard became the model for legal education. It was Langdell who gave legal education the case method of instruction which today remains the predominant pedagogical technique in law schools. Since Langdell rejected the role of other disciplines and clinical or practical experience in the education of the lawyer, legal education under the Harvard model swung 180 degrees away from the apprenticeship system or law office-oriented training.

In 1899 in response to the emphasis on academic legal education, the ABA Section of Legal Education called for the establishment of an organization of law schools. The Association of American Law Schools was formed the following year and immediately adopted minimum standards for its member schools.[5] AALS members pressured the ABA into appointing a Committee of Legal Education in 1920. This committee, under the chairmanship of Elihu Root, proposed that every candidate for admission to the bar be a graduate of a law school which required two years of prior college education, a minimum of three years of law study, an adequate library, and sufficient full-time faculty.[6] The Root report also called for the ABA to invest the Council on Legal Education and Admission to the Bar with power to accredit law schools.

Highly impressed by the impact of the Flexner Report on Medical Edu-

3. A. DE TOCQUEVILLE, DEMOCRACY IN AMERICA, 348–58 (6th ed. Boston 1876) (1st ed. Paris 1835–40).

4. Stevens, *Two Cheers for 1870: The American Law School*, in LAW IN AMERICAN HISTORY 405, 417–18 (D. Fleming & B. Bailyn eds. 1971).

5. Gee and Jackson, *supra* note 2, at 739. Candidates for the degree were to have at least a high school diploma or its equivalent, and the course of study for the law degree was to cover at least two years of thirty weeks a year and to be increased to three years of study after 1905.

6. *Id.* at 741.

cation, which appeared in 1910, the ABA petitioned the Carnegie Foundation to make "a similar investigation . . . into the conditions under which the work of legal education is carried on in this country."[7] President Pritchett of the Carnegie Foundation accepted the request, and Alfred Z. Reed, a nonlawyer educator, was appointed to conduct a series of studies of legal education and of the legal profession.

His first report, Training for The Public Profession of the Law,[8] although published in 1921, contains enlightening analysis much of which is relevant for legal education today. As one commentator recently noted:

> What is startling today is how much took place before he [Reed] wrote and how little it seems has happened since then. . . . Even the criticisms are the same. Fifty years ago law professors were saying that the case-method was unsatisfactory, especially in the second and third years when students seemed less interested. Legislation and administrative law instructors were complaining that their subjects were not given sufficient attention, [sic] there was talk about the need for "practical" instruction. Legal aid offices were being used for "clinical" exposure. Articles could be lifted out of the Law School News of 1915 and passed off today as tolerably fresh ideas in the Journal of Legal Education.[9]

Reed's report, exhaustive in its analysis of trends in legal education prior to 1920, was the first concerted effort to understand the legal profession and legal education and to shape the training of lawyers.

Reed's study of the legal profession led him to the conclusion that its "public" nature must be emphasized:

> Practicing lawyers do not merely render to the community a social service, which the community is interested in having them render well. They are part of the governing mechanism of the state. Their functions are in a broad sense political. This is not due primarily to the circumstance that a large proportion of our legislative and administrative officials, and virtually all our judges, are chosen from among this practically ruling class. Nor is it due entirely to the further circumstance that the growth of our law in the form of judicial decisions that interpret and declare its actual content is necessarily greatly influenced by arguments of counsel. It springs even more fundamentally from the fact, early discovered [,] that private individuals cannot secure justice without the aid of a special professional order to represent and to advise them. To this end lawyers were instituted, as a body of public servants, essential for the maintenance of private rights.[10]

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7. Stolz, *Training for the Public Profession of the Law (1921): A Contemporary Review, reprinted in* H. PACKER & T. EHRLICH, NEW DIRECTIONS IN LEGAL EDUCATION, 227, 232 app. (1972) hereinafter cited as PACKER & EHRLICH.
8. REED, *supra* note 1.
9. Stolz, *supra* note 7, at 228.
10. REED, *supra* note 1, at 3.

Furthermore, it was clear to Reed that the problems of legal education were decidedly different from those of medical education, and for this reason he cautioned against use of the Flexner report as a model. Although legal education and the profession of law are often compared to medical education and the medical profession, the differences are significant. The medical profession in the United States is a highly organized body of county, state, and national medical societies, whereas there is a much greater diffusion of power and influence within the loosely organized American bar. Moreover, medical practitioners have to respond to rapid scientific change, discarding old methods for new ones. The lawyer, on the other hand, is more resistant to change, hanging on to tradition and precedent, which are emphasized by the very nature of the law.[11] These differences persuaded Reed to focus his study on the precedent, tradition, and historical development of American legal education.

In Reed's view the history and future of legal education were inextricably connected to the American university and to the organized bar. The relationship between legal education and the university was well established by 1920; however, the bar's connection to legal education was not as yet well defined. Therefore, the issue as Reed saw it, was whether legal education and the legal profession would strive towards a "unitary" or a "differentiated" bar. To establish a unitary bar according to Reed, would have been equivalent to forcing everyone into the image of the Harvard graduate.[12] On the other hand, building a differentiated bar with some lawyers trained to be more widely competent would have corresponded more closely to reality because there was a vast difference in the quality of education offered in law schools across the nation.

Reed argued that the concept of a unitary bar was doomed to failure and that "[a]ttempts by each type of law school to carry the entire burden of legal education produce such unsuccessful results as to bring the entire body of practitioners into disrepute."[13] He was opposed to the attempts to drive out the intellectually less favored proprietary and part-time schools in the

11. *Id.* at xv-xvi.

12. In a report, published in 1914, the Austrian scholar, Josef Redlich observed that the case or Socratic method benefitted primarily the more talented students and absorbed law teachers in case book development rather than legal literature. In Redlich's view emphasis on the case method threatened an intellectual approach to the law which included courses and lectures explaining fundamental concepts and providing an overview of the law. Finally, Redlich noted the absence of practical legal education. Sharing these views with Redlich, Reed was concerned about the homogeneity of method in legal education, finding it unsuitable for other than first-rate faculty teaching full-time law students with college backgrounds. Stevens, *supra* note 4, at 429.

13. *Id.* at 418.

spirit of the aftermath of the Flexner investigation. Supporting, instead, the idea of a differentiated bar, Reed indicated that "[t]he dividing line between the different types of lawyers may be determined by the economic status of the client rather than by the nature of the professional service rendered."[14] But, in any case, he predicted that through a differentiated bar "that portion of our law which controls the making of lawyers, and thus affects our system of government at its very core, will be brought into harmony with popular needs and aspirations."[15]

The idea of a differentiated bar, however, met with hostility from members of the ABA and the AALS. The Root Committee, provided with a predistribution copy of Reed's report, preempted Reed and dismissed the notion of a differentiated bar:

> Turning first, then to a consideration of what a lawyer's training should be, we meet the suggestion that there must be different kinds of training to produce different kinds of lawyers. With this position we do not agree. . . . In our opinion, however, there is no such difference between kinds of legal work. All require high moral character and substantially the same intellectual preparation. Nor can there be tolerated a recognized distinction between good and poor legal education. . . . Because we cannot favor the continuation of a class of incompetent practitioners, we cannot favor the continuation of a system of training which fails to reach the highest practicable standard.[16]

Following this tumultuous period of critical evaluation of legal education, the pace and scope of educational reform decreased considerably. The emphasis shifted from legal education to the nature of law itself. This eclectic period in the history of legal education was probably most influenced by the American Legal Realist movement, which began in the thirties.[17] Among the goals of the Realist philosophy of law was to make the "science" of law more useful. The movement infused certain law schools with intellectual excitement. At Yale and Columbia particularly, inquiring and challenging minds were busy comprehending the function of law and evaluating its effects. The Columbia law faculty, reflecting the pragmatic, technological orientation of this era undertook the Herculean task of reorganizing its entire curriculum along functional lines with the goal of teaching law as an integral part of the social sciences. In a similar vein the Johns Hopkins experiment under the direction of Walter Wheeler Cook culminated in the

14. *Id.* at 419.
15. *Id.* at 420.
16. Stolz, *supra* note 7, at 247–48.
17. For a good analysis of this period in the history of law and legal education, see Woodward, *The Limits of Legal Realism: An Historical Perspective, reprinted in* H. PACKER & T. EHRLICH, *supra* note 7, at 331 app.

founding of the Johns Hopkins Institute for the Study of Law which was committed "to the idea that law could and should be scientific, that it was a science in its own right."[18]

One result of this reform movement was the addition of social scientists to the law faculties of a few schools, notably Columbia and Yale. Additionally, new teaching materials were developed that went beyond the usual appellate cases to reflect more faithfully the problems encountered in practice and their social implications. New courses began to appear in what had become a standardized and unchanging curriculum and the seminar was conceived as a vehicle for experimenting with the new courses.

The decade of the 1960s in America, especially with respect to higher education, witnessed the intense, almost revolutionary rejection of societal values, traditions, and institutions by many young people. This was also a period of prosperity in higher education with unprecedented expansion of facilities and programs to accommodate the swell of student enrollment from the "baby boom." The 1960s set the stage for a new wave of legal education reform which was to focus on clinical legal education, structural and curricular change, professional ethics, and lawyer competency. These attempts to reform legal education formed the background and provided the impetus for the work of the Special Committee. It is important, therefore, to consider each of these in order that the research emphasis and recommendations of the committee will be evaluated in the proper context and perspective.

In response to the charge that the traditional Langdellian model of legal education was too theoretical, clinical programs emerged and attempted to provide students with more realistic legal experience. However, as one commentator has noted, "Innovation in legal education comes hard, is limited in scope and permission, and generally dies young."[19] Moreover, what appears to be a major innovation at any period in the history of legal education is more often a manifestation of the cyclical nature of reform. This is especially true of the clinical legal education movement. With its roots in the apprenticeship system, the movement resurfaced in the early twentieth century under the advocacy of Jerome Frank.[20] Following a period of quietude, "growing demands for relevance and the increasing sense of boredom felt by the elite schools' carefully selected students in their second and third years fueled the demands for clinical studies"[21] in the late 1960s.

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18. T. SHAFFER & R. REDMOUNT, LAWYERS, LAW STUDENTS AND PEOPLE 21 (1977).
19. *Id.* at 24.
20. *Id.* at 22–23.
21. Stevens, *supra* note 4, at 523.

The development and spread of clinical programs represent the most visible changes in legal education in the decade of the 70s.[22] The impetus for this recent wave of "innovation" has come from the Council of Legal Education for Professional Responsibility (CLEPR), created and funded by the Ford Foundation in 1968. Several differences between the modern-day version of clinical legal education and its antecedents should be noted. First, current clinical programs consist primarily of training experiences supervised wholly or in part by law school personnel. This distinguishes them from the apprenticeships of old which were totally separate from any university-based legal education. Second, clinical instruction today is more systematic and integrated with the basic curriculum. And, third, a new breed of faculty, the clinical law teacher, is developing, although the issue concerning the status of clinicians in the academic setting has not been satisfactorily resolved.[23]

With the rise of clinical legal education, the time appeared ripe to consider the structure of legal education and the law school curriculum. Reminiscent of the work of Alfred Z. Reed, the AALS sponsored a study of the legal profession and legal education under the direction of Paul Carrington, then of the University of Michigan School of Law. The 1971 report of the Curriculum Study Project Committee, commonly referred to as the Carrington Report,[24] concluded generally that:

> Law schools should offer education that corresponds to the varied needs of the public for legal services and to the varied goals of a wider array of students. . . . Schools should free themselves of received dogmas, such as the conception that all graduates must be trained to omnicompetence, or that the first degree in law can be awarded only after three years of law study within the walls of a law school. Law school programs should reflect functional needs and break free of offerings and approaches that have nothing but longevity to commend them.[25]

To illustrate these conclusions, the Committee presented a model curriculum embedded in a sample catalogue for prospective students of a mythical school and consisting of three parts. The Standard Curriculum represented the core program leading to the J.D. degree and could be completed in two years of law school following three years of college. For post-J.D. study, specialized training and an Advanced Curriculum was proposed. And finally, the Open Curriculum, available to any student who desired to learn about law,

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22. McKay, *Legal Education*, in AMERICAN LAW: THE THIRD CENTURY 273 (1976).
23. Council on Legal Education for Professional Responsibility, Inc., Survey and Directory of Clinical Education 1978–1979, at xviii (1979).
24. The Carrington Report, *reprinted in* H. PACKER & T. EHRLICH, *supra* note 7, at 95 app.
25. *Id.* at 97.

was designed as "a direct assault on the unitary tradition of the legal profession by offering professional degrees for allied professions."[26] The Carrington proposals for structural and curricular change in legal education, while they generated comment, received very little enthusiasm from law faculties or the organized bar.

Along similar lines, the Packer-Ehrlich monograph[27] sponsored by the Carnegie Commission on Higher Education analyzed developments and trends in the legal profession and their effects on legal education. The authors of this monograph made several recommendations based on issues framed by an advisory committee. Emphasizing structural reform, they called for more diverse legal education models, favored the use of paraprofessionals within the legal profession, and suggested a reduction in the total time required for college to effect a dramatic restructuring of legal education. Seven years of higher education is still the norm for a law degree. Thus, the three year Langdellian model resisted yet another attempt at reform.

At about the time of the Carrington and Packer-Ehrlich studies, events were taking place which were to start an avalanche of criticism of the legal profession and of legal education. First, the embarrassing and disturbing episode known as Watergate had a significant impact on the legal profession in several respects. The unethical and illegal practices and actions of a number of lawyers in government service not only cast a shadow on the entire legal profession in the eyes of the public, but also evoked an examination of ethics in the study and practice of law. While law review articles on the subject proliferated, the ABA in 1974 amended its accreditation standards for law schools to include required instruction in professional responsibility, and the Multistate Bar Examination Committee devised the Multistate Professional Responsibility Examination, passage of which is required for admission to the bar in some states.

Second, in his Sonnett Memorial Lecture of 1973,[28] Chief Justice Warren E. Burger delivered a proposal for a first step in specialist certification. Citing our failure to inquire into the qualifications of advocates as an indication that we are more casual about our judicial process than about the quality of our electricians,[29] Burger pointed to legal education as a cause of inadequate

26. *Id.* at 99.

27. H. PACKER & T. EHRLICH, *supra* note 7.

28. W. Burger, The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice? Fordham University School of Law Annual Sonnett Memorial Lecture (Nov. 26, 1973). The lecture has been reported in 42 FORDHAM L. REV. 227 (1973–74). *See also* W. Burger, *Advocacy On Trial*, 1 LEARNING AND THE LAW 26 (Spring 1974), and 60 A.B.A.J. 171 (Feb. 1974).

29. *Id.*

advocacy. "Law schools fail to inculcate sufficiently the necessity of high standards of professional ethics, manners and etiquette as things basic to the lawyer's function. With few exceptions, law schools also fail to provide adequate and systematic programs by which students may focus on the elementary skills of advocacy."[30]

Quick response to Burger's comments came from Chief Judge Irving R. Kaufman of the Second Circuit Court of Appeals who appointed a committee of trial lawyers, judges, and academicians to assess and develop proposals for ameliorating the problem of incompetency in trial advocacy. The Clare Committee, named after its chairman, Robert L. Clare, Jr., reported that such incompetency, in fact, did exist in the federal courts and laid a great deal of blame at the doorstep of the law schools. The remedy proposed by the committee for this lack of proper training was certification that every applicant for admission to the District Courts of the Second Circuit has successfully completed formal courses of instruction in an educational institution in evidence, civil procedure (including federal practice), criminal law and procedure, professional responsibility, and trial advocacy.[31]

Criticism of the "Clare cure"[32] has centered on the failure to demonstrate beyond conjecture that there is any correlation between the problem and the cure. The major concern, however, is with its impact on legal education. Judge Frankel, then of the Southern District of New York termed the proposed imposition of these course requirements upon law schools as "a groundless intrusion, an invasion of our (and the Bar's) direct responsibilities, an affront, and a dangerous precedent."[33]

The autonomy of law schools and their control of legal education curricula have been threatened by the efforts of state bars to establish minimum course requirements for admission. Rule 13, promulgated by the Indiana Supreme Court in 1973 after a larger than usual number of applicants failed the 1971–72 bar examinations, requires the successful completion of 54 credit-semester hours of designated subject matter in law school.[34] The South Carolina Supreme Court very recently signaled its approval of Indiana's action by requiring that applicants for admission to the bar have

30. *Id.*

31. *Final Report of the Advisory Committee on Proposed Rules for Admission to Practice*, 67 F.R.D. 159 (1975).

32. Pedrick & Frank, *Trial Incompetence: Questioning the Clare Cure*, 12 TRIAL 47 (1976).

33. *Id.* at 59.

34. Indiana Supreme Court Committee on Rules of Practice and Procedure, Proceeding on Rule 13 of the Rules on Admission to the Bar of Indiana by Written Examination 79–80 (1975).

passed a course in each of fourteen designated subjects, and for solo trial work an attorney in South Carolina must certify that he or she has had eleven trial experiences distributed in a specified manner across five categories.[35] While these states cite their commitments to lawyer competency as the reasons for these rules, there is among legal educators the well-founded fear that students will be forced into premature decisions about where they wish to practice; and, furthermore, that more reasoned and empirically supported curriculum reform will be precluded.

In accordance with his concern for the competency of trial advocates and by resolution of the Judicial Conference of the United States, Chief Justice Burger in 1976 appointed a special committee to consider standards for admission to practice before the federal courts. This committee, known by the name of its chairman, Chief Judge Edward J. Devitt of the Federal District of Minnesota, asked the Federal Judicial Center to undertake a program of research for the purposes of assessing the quality of advocacy in the federal courts and of developing data bearing on three issues:

1. the importance of the problem of inadequate trial and appellate advocacy;
2. whether inadequate advocacy is a more important problem among some segments of the profession than among others; and
3. whether certain aspects of trial or appellate performance can be identified as particularly appropriate targets for improvement efforts.[36]

From these data, consisting of the judgments and opinions of judges and lawyers about the quality of lawyer performances, and from committee meetings, public hearings, and written comments, the Devitt Committee submitted its recommendations to the Judicial Conference in 1979. The Judicial Conference unanimously approved the recommendations that it:

1. Recommend to the American Bar Association that it consider amending its law school accreditation standards to require that all schools provide courses in trial advocacy, including student participation in actual or simulated trials taught by instructors having litigation experience, and that the Bench and Bar be encouraged to support the law schools in achieving the goal of providing quality trial advocacy training to all students who want it;
2. Create a special committee of the Conference to oversee and monitor,

35. Rules for the Examination and Admission of Persons to Practice Law in South Carolina 4–8 (1980).

36. A. PARTRIDGE & G. BERMAUT, THE QUALITY OF ADVOCACY IN THE FEDERAL COURTS 1 (1978).

on a pilot basis, an examination on federal practice subjects, a trial experience requirement and a peer review procedure, in a selected number of district courts that indicate a desire to cooperate in any or all of the above programs;

3. Recommend to the district courts generally that they adopt student practice rules and support continuing legal education programs on trial advocacy and federal practice subjects and encourage practicing lawyers to attend.[37]

Amidst the concern for lawyer competency sparked by Chief Justice Burger and aimed at American law schools, the ABA Section of Legal Education and Admissions to the Bar appointed a blue ribbon Task Force on "Lawyer Competency: The Role of the Law Schools" drawn from the bench, the bar, and law school faculties. In its report the Task Force, under Roger Cramton, rejected "the simplistic view that attributes to the law schools the deficiencies of the legal profession . . . [and also] the views that every law school should be the same and that external regulation of legal education is the path to its reformation."[38] The Task Force identified three essential components of competent professional performance: "analytical ability and knowledge of the law, ability to perform basic legal tasks, and diligence and ethical responsibility in the application of that knowledge and skill."[39] The Cramton Report contained specific recommendations addressed to law schools in the areas of admissions; educational program; and faculty appointment, rewards, and research. Its recommendations to the ABA concerned the accreditation and reinspection process and support for a variety of projects. Addressing bar admission authorities, the Task Force discouraged the requirement of specific courses and other restrictive prerequisites for admission to the bar, such as classroom hours and limitations on credits in supervised clinical work. The Cramton Report called for increased support from lawyers generally and from governmental agencies. The Task Force recommendations may have served to plug the hole in the dike, but whether they represent sufficient solutions remains to be seen.

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37. *Final Report of the Committee to Consider Standards for Admission to Practice in the Federal Courts to the Judicial Conference of the United States*, 83 F.R.D. 215 (1979).

38. Letter from Roger C. Cramton to Readers of the Task Force Report on Lawyer Competency: The Role of the Law School (Aug. 31, 1979), *reprinted in* ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATION OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS v (1979).

39. *Id.* at 1.

III. PERSPECTIVES

American society has increased in complexity dramatically since World War II. The pace and stress of the evolution of modern society have created gaps (at times even chasms) between the needs of society and the capacity of our institutions to fulfill them. This is especially true of our legal system. The critical commentaries of the past two decades outlined above reflect the perceived inability of the legal profession to handle adequately the roles society demands of it. There have been attempts not only to improve the system of law and justice in the United States, but also to upgrade the quality of the legal profession which administers that system. Some of the attempts to improve the legal profession have focused on legal education, as the efforts at reform outlined above indicate. There are several possible reasons for this focus. The improvement of legal education is certainly a more manageable task than the reform of the entire legal profession, yet efforts to improve legal education seem worth the effort due to the considerable impact they might have on the quality of the legal profession.

Since American legal education has certainly not suffered for want of commentaries or critiques or from a dearth of recommendations for piecemeal or wholesale reform, it seems fair to question why still another report on legal education should be produced. It may well be that this one, like some others before, will be relegated to the bookshelf to begin the process of dust gathering. But we have hopes that this report will have a different fate. Why might it deserve a better fate?

This report represents a review and integration of the findings from a major, reasonably comprehensive effort to study legal education and professional socialization[1] empirically and systematically. That does not imply that other studies and reports have been without merit or that all that can and should be researched has now been accomplished, for, among other things, this Report will recommend further research. Nonetheless, this Com-

1. Professional socialization is the process through which professional attitudes, values, skills and behaviors are learned or acquired.

mittee's report is unique because it is founded on a major research program of the American Bar Foundation.

The initial step taken by the ABF in this research program was to commission Barry Boyer and Roger Cramton, ABF Affiliated Scholars, to survey existing empirical information on law schools, law students, and law teachers and to recommend areas for further research, establishing priorities among them in an effort to deal with the realities of limited resources. In their report, *American Legal Education: An Agenda for Research and Reform*,[2] Boyer and Cramton noted that the program of research should be "empirically based, focused on the principal factors in the process of legal education, and designed with the objective of aiding decision making on important issues currently confronting legal education."[3] While the Boyer-Cramton report set no rigid agenda either for the work of this Committee or for the research of the American Bar Foundation, it is reasonable that the present report and the research on which it is based should be tested by the standards that Boyer and Cramton proposed. That is, that this report's findings and recommendations should rest on the careful analysis of the best available data, and its recommendations ought to serve the pragmatic purpose of aiding decisions on legal education policy.

Boyer and Cramton identified five major areas for research in legal education. In the first of these areas, curriculum and pedagogy, they cited several recent developments: the proliferation of new courses with a concomitant "fragmentation of the curriculum into a bewildering array of largely elective courses,"[4] casting "doubt as to whether the law schools are inculcating a common professional culture—a common core of values and knowledge—among their graduates";[5] the growth of clinical legal education; the introduction of modern technological teaching aids; and the attempts to apply learning theory and other psychological principles to the teaching of law. The agenda suggested for this segment of legal education was a focus on "illuminating the processes and effects of legal education on law students as they progress through law school and the early years of practice, with a view toward demonstrating which aspects of legal education are valuable and effective and which aspects seem to be in need of improvement."[6]

The area with the largest amount of prior research concerned law students

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2. Boyer & Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221 (1974).
3. *Id.* at 223.
4. *Id.* at 230.
5. *Id.* at 231.
6. *Id.* at 233.

—their backgrounds, characteristics, and motivations for attending law school. Here Boyer and Cramton discussed, first, the need for a data base of demographic characteristics of law students to aid in designing samples for larger studies. This data base would have to meet several criteria: (1) it should function on a continuous basis; (2) it should be as comprehensive as possible; and (3) safeguards for confidentiality would have to be developed.

The second issue concerning law students was why they come to law schools, including what prior information they have about law schools and legal careers. Previous research had suggested several potential motivations for selecting law as a discipline: prestige and high earnings; intellectual interest in law study and legal work; "the traditional image of the lawyer as a professional dedicated to ideals of service, high ethical standards, and problem solving";[7] the function of law as a "mechanism for distributing rights, power and influence among different social groups";[8] and external reasons, such as the advancement of a nonlegal career, influence of "significant others," and lack of opportunity to pursue a first-choice field.

The choice of and admission to a law school comprised the third area of inquiry concerning law students. What factors are important for the choice and what information does the student apply to this decision? Boyer and Cramton cited the admission practices of the law schools as important aspects of the decision-making process by which a student and a law school select one another. They noted, furthermore, that this is the first stage in professional certification.

The professional socialization process or the "conversion of college graduates into lawyers"[9] affects not only a student's intellectual development and skills training, but also his or her personality, values, work habits, and social roles. Boyer and Cramton identified several elements of this fundamental part of legal education: the emotional climate of law school centering on competition, success, and failure; the acquisition of the lawyer's skills, including the development of an inventory of skills contributing to a successful law career; and the learning and teaching processes as they influence the shaping of future lawyers.

Besides students, a major dimension of legal education is the law faculty. Very little research on law teachers preceded the Boyer-Cramton report, which gave them virtually an open field for suggestions. First, they cited the background characteristics and motivations of law teachers as potential

7. *Id.* at 249.
8. *Id.* at 250.
9. *Id.* at 257.

sources of significant influence on the professionalization process. A second factor of interest concerned law teachers' perceptions of goals and incentives in legal education. Third, Boyer and Cramton considered "how law teachers apportion their working time among the various professional activities available to them."[10] And finally, they deemed it worthwhile to examine policies regarding faculty hiring, promotion, and tenure as they relate to the goals and incentives of faculty.

What happens to law graduates as they enter into the practice of law constitutes another major factor of influence on legal education. And the final area discussed by Boyer and Cramton involves the economics of legal education. As they pointed out, "[a]mong all the unanswered questions, unsupported assumptions, and uncertain future directions of legal education, one proposition seems beyond challenge: financing the training of lawyers is going to be increasingly difficult in the years to come."[11] Since economic factors affect all the areas of legal education targeted for inquiry by Boyer and Cramton, they chose to focus on potential funding sources, such as scholarships and loans, both private and public, and government funding for law schools.

They concluded their agenda with some tentative priorities for future research on legal education. The highest priority was assigned to the need for information on the economics of legal education. The establishment of an ongoing statistical information system with data on law students, law schools, and lawyers was cited next, and the ABF was suggested as the organization which should have primary responsibility for this task. In addition to these, Boyer and Cramton mentioned several other items of priority: "defining and teaching the skills or competencies characteristic of a good lawyer," the professionalization process, the emotional environment of the law school, and law teachers. They noted that since law students have been researched more than any other aspect of legal education, they would not assign this area priority.

The initial ABA resolution and the ensuing work of the American Bar Foundation scholars and of this Committee have been responsive to some additional premises and perspectives that we ought to make explicit. At the time of the authorizing ABA resolution and of the Boyer-Cramton report, perceptions that all was not well with legal education were widespread. Those perceptions were, of course, consistent with the social ferment of the

10. *Id.* at 285.
11. *Id.* at 289.

late sixties and early seventies. But the many critiques and commentaries that have been published, the committees that have met from time-to-time finally to issue reports, and the commonplace conversations of judges, lawyers, legal educators and law students have oftentimes reflected disquiet at a minimum and dismay on occasion.

Presumably all human processes and institutions are flawed and are capable of improvement, so it is not especially noteworthy to say that there is certain disquiet and occasional dismay about American legal education. The frequency of such expressions may be indicative only of the vagaries of human nature (and indeed we may not know when we have wrought well), but it seems more likely that it reflects the persistence of certain unresolved issues and the resilience of American legal education in the face of criticism and challenge. From the plethora of possibilities, the following seem to be particularly enduring issues:[12]

1. *Issues of professional competence:* What is the proper balance between "theoretical" and "practical" legal education? What "practical" skills can and should be taught in law school? Are law graduates adequately prepared to serve the public?
2. *Issues of professional purpose:* What social objectives ought to be served by the legal profession, and thereby ought to become part of the professional socialization process?
3. *Issues of professional ethics:* When, where, and how should aspiring lawyers learn and internalize appropriate standards for professional ethical behavior?

These issues imply that there is some ideal state, or at least some practicable better state, for legal education. Answering these questions and devising appropriate and effective educational means to implement the answers would serve as an important, albeit partial, response to the many years and words that have witnessed serious criticism of American legal education.

Research directed toward answering such questions should serve to describe, as objectively and accurately as possible, the state of things as they are in American legal education. Such research would illumine basic issues, for much of the controversy in legal education has had to do with contending images of reality.

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12. In our view almost any careful reading of the critical literature would lead to a list much like ours. See, for example, F. Zemans & V. Rosenblum, The Making of a Public Profession (manuscript copy), in which very much the same issues are identified.

Research on the current reality, and on the forces and factors that seem to have produced it, will enlighten but not resolve the fundamental value choices that are inherent in the enduring issues we have listed above. By one means or another, consciously or unknowingly, law schools and the legal profession inevitably choose the sorts of graduates they wish to produce, the ethical standards and qualities they deem important, and the role they would have lawyers and the legal profession play in our society. That those choices can best be made in the context of knowing the current state of affairs, and what seems to have produced it, seems self-evident and self-justifying.

BOUNDARIES: SPECULATIONS ON THE ART OF THE POSSIBLE

Another facet of our perspective is the importance of recognizing and remembering that legal education and professional socialization are part of a larger, longer, and more complex process of general education and socialization that molds individuals and, through them, institutions. There is particular danger, for example, in thinking of the three-year law school experience as encapsulated and complete, so that either too much blame is laid on the law schools for the perceived shortcomings of lawyers or that too much is expected of law schools in terms of amelioration of the profession. Obviously much occurs before students reach law school that may have molded their orientations and values, and much will follow law school that will challenge, redefine, or confirm the experiences that have gone before.[13]

But even though what has gone before law school and what will come after will have its own impact on professional socialization, it is reasonable and appropriate, nonetheless, for us to focus on those aspects of the professional socialization process that are arguably within the power or influence of the legal profession and legal educators to preserve or change. The impact of previous experience will yet be important even in that, for experience forms the context for those policies that are within our power and influence. Likewise, educational policies must take into account the experiences that will follow law school. Some factors and processes are central to professional socialization, some peripheral, some remote. In the sense we propose, their relative centrality or remoteness has to do with our capac-

13. Legal education as part of a developmental continuum is discussed by Zemans and Rosenblum, *supra* note 12, especially in Chapter 6 at 8 *et seq.*, and by Pipkin, *Law School Instruction in Professional Responsibility: A Curricular Paradox*, 2 ABF RESEARCH J. 265 *et seq.* (1979). Much of Hedegard, *The Impact of Legal Education: An In-Depth Examination of Career-Relevant Interests, Attitudes and Personality Traits Among First-Year Law Students*, 4 ABF RESEARCH J. (1979) reflects the importance of orientations acquired by students before entering law school.

ity to affect them, rather than with their relative impact on professional socialization.

CHILDHOOD AND ADOLESCENT SOCIALIZATION

General socialization literature reflects much controversy over the relative importance of the various maturation stages in the socialization process. Equally, there is disagreement about the relative influence of the various agents or agencies of socialization (parents, family, peers, work experiences, etc.) in the process. Obviously it is not our purpose (or competence) to enter into an assessment of the relative importance of stages or agents,[14] but rather only to note that there is very little legal educators or the legal profession can do to affect the socialization process from birth through adolescence. At the same time we must remember that socialization during infancy, childhood and adolescence is likely to shape the orientations and values of students prior to law school, and thereby to create certain perceptions through which the law school and the legal profession may be viewed. Knowledge of the preceptions and of the possible constraints they may produce, would be useful, and the appropriate integration and understanding of the general process of socialization into our efforts in legal education is a goal to be sought, but one not yet achieved.[15]

UNDERGRADUATE EDUCATION

Prelegal education as it is offered in colleges and universities is another matter. Its relationship to legal education and the capacity of legal educators and the legal profession to affect the process of prelegal education make it more central to our concerns. For example, take the 1953 Statement on Prelegal Education of the Association of American Law Schools[16] as it is presented in the *1980–82 Prelaw Handbook*.[17] The Statement consists of general advice and broadly recommends the acquisition of certain insights and skills, while abjuring the prescription of particular programs or courses.

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14. For a brief review of continuing points of view about general socialization see Pipkin, *supra* note 13, at 266-72.

15. Many disciplinary intersections between social sciences and the law are still in gestation. The discipline of psychology dominates socialization literature. One impressive example of the possibilities of research on psychology and law is LAW, JUSTICE AND THE INDIVIDUAL IN SOCIETY: PSYCHOLOGICAL AND LEGAL ISSUES (J. Tapp & F. Levine eds. 1977).

16. 1952 AALS PROCEEDINGS 106-14.

17. ASSOCIATION OF AMERICAN LAW SCHOOLS AND THE LAW SCHOOL ADMISSION COUNCIL, 80-82 PRELAW HANDBOOK: ANNUAL OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS, 1980. Appendix B.

We will see below that the research program of the American Bar Foundation sheds much light on particular shortcomings in background and skills that both lawyers and law students perceive in their own education. It is generally recognized that there are shortcomings in the educational process, particularly with respect to the learning of communication skills in the early years of education. In our view, the time may be ripe for the reformulation of advisory statements on prelegal education. Certain perceived deficiencies may be more suitably remedied by prelegal than by legal education. The possibilities for action include the recommendation of a particularized prelaw curriculum or of certain prelaw majors, limited but specific course recommendations, or at a minimum the dissemination of information about legal education and the legal profession that takes into account relevant, recent research findings. We take special note of recent developments in undergraduate legal studies programs. The impact of such programs on prelegal education is yet to be seen.[18]

On the other hand, many aspects of undergraduate education are largely beyond the direct influence of legal education policy. The choice by students of the colleges or universities they attend; the idiosyncrasies of particular schools, programs, courses, and professors; undergraduate degree requirements; most extracurricular experiences; and the adequacy or inadequacy of undergraduate academic work affect what happens in law schools, yet there is little that legal education policy can do to influence them directly. There are no doubt indirect influences through the anticipation of what law schools expect or require.

LAW SCHOOLS

When we come to legal education, quite obviously we encounter the most central factors and processes in professional socialization (centrality again being defined by the capacity of legal education policy to affect the state of

18. Note especially the work of the American Bar Association Commission on Undergraduate Education in Law and the Humanities, which has been engaged for several years in commissioning texts on a variety of law-humanities themes. Note also the following reference to Recommendation 13 of the Rockefeller Commission on the Humanities which appeared in *The Chronicle of Higher Education* of October 14, 1980:

> We recommend that joint conferences of professionals, professional-school administrators and faculty, and humanists be convened to discuss the kinds of preparation in the humanities that professional schools should expect of their applicants and graduates. Participants and sponsors for these conferences should include such organizations as the American Assembly of Collegiate Schools of Business, the Association of American Medical Colleges, as well as public and private agencies with an interest in the humanities in professional education.

things). To present an exemplary, rather than an exhaustive, list consider the following:

Recruitment of students
Admission criteria and processes
Financial aid programs
Stated educational objectives of law schools
Curricula of law schools
Pedagogy in law schools
Academic standards in law schools
Incentives, rewards, and sanctions in law schools
Career information and placement assistance
Faculty recruitment, promotion, tenure, and support policies

Clearly each of the above, at least in terms of its formal, planned, and expected aspects, is central in any agenda of legal education and policy, and each can in principle be linked to the process of professional socialization. In other words we could readily intervene through each to achieve certain policy objectives.

At the same time, there are many aspects of the law school experience that are informal, unplanned, and officially unintended. The nature and impact of law student interaction and peer socialization exist largely outside (though they are contextually linked to) formal legal education. And what goes on there may or may not be consonant with law school objectives. Many group activities in law school, from law reviews to law fraternities and sororities, play an informal as well as a formal role in socialization. Finally, and perhaps most interesting, is the role of the "latent curriculum,"[19] that is, the courses and activities of the law school as they are evaluated and chosen by students, based upon some informal and inexplicit evaluative system (a "pecking order" of law school experiences).

FACTORS THAT FOLLOW LAW SCHOOL

Certain factors in professional socialization are chiefly within the power of the organized bar or of the courts. First in time and of obvious importance in the impact they have on law students are bar admission criteria and testing processes (including explicit court policies as, for example, Indiana Rule 13).[20] Much of continuing legal education (and "bridging the gap"

19. We use the phrase as it is presented by Pipkin, *supra* note 13, at 257-65.

20. Indiana Supreme Court Committee on Rules of Practice and Procedure, Proceedings on Rule 13 of the Rules on Admission to the Bar of Indiana by Written Examination.

courses) is under the direction of the organized bar, as are specialist certification programs created in recent years.

Other factors are only minimally within the policy direction of the organized bar or of the courts, yet on the surface these would seem to have overarching importance in the ways professional opportunities and careers develop. The market for law graduates, the economics of law practice, the way job context or specialization may develop and the socialization that occurs in work settings and amongst professional peers are, at least now, largely beyond planned policy. Yet such factors may contribute as much, or more, to professional socialization as all the plans and designs of legal educators, the courts, or the organized bar.

CONCLUSION

Our objective in this short section has been to heighten awareness and sensitivity to certain enduring issues and to the contexts in which we may or may not be able to take effective action: some aspects of what happens before law school, but not others; most aspects of legal education, but not others; many aspects of postgraduate professional experience, but not others. The categories are not helpful as absolutes, but they may serve simply to suggest a way of thinking about the pragmatic application of the research findings we will review in the following section to the purpose of preservation or reform in American legal education.

IV. RESEARCH REVIEW

The purpose of this section is to review available literature and to present findings framed as responses to questions raised in the section. For the more thorough and detailed analysis supporting the findings presented, the reader can best consult the original research, for each piece warrants close attention and it is not our purpose here to dwell at length on any single point. Rather, we seek to present findings that may help to form the predicate for resolving "major policy issues concerning the content of legal education today and in the years ahead."[1] In this Report the findings will serve as the foundation for the Committee's recommendations in Section V. The substance comes from the research that we review; the recommendations are based on our own interpretation of the implications of the substantive research. One theme that will be evident throughout our review is the apparent effect of prestige and status on legal education and the legal profession.

A. QUESTIONS ABOUT CHOOSING LEGAL EDUCATION AND A LEGAL CAREER

Questions about who goes to law school, and why, are important in studying legal education because information about the background characteristics and qualities of those students who choose law school and a legal career helps provide a basis for comparison with what happens to students while in law school and after. Boyer and Cramton called for the building of a data base that would record factors such as socio-economic status, race, sex, academic qualifications, and the like.[2] That suggestion has largely gone unheeded. While gathering a single large national sample for this purpose might be feasible, the expense of administering an ongoing system and of keeping it up to date, not to mention the periodic analysis and reporting from the data base, would pose intractable problems within normal funding

1. Report of the American Bar Association Special Committee to Consider the Feasibility of Undertaking a Comprehensive Survey of the Legal Profession, at 2 (August 1972).

2. Boyer & Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221, 236 (1974).

sources. Equally, it is by no means clear that the returns from such an ongoing system would warrant the costs. At least, some cogent justification would have to be demonstrated.

1. WHO GOES TO LAW SCHOOL?

We have not gotten very much beyond Boyer and Cramton's account from then extant research that "law students tend to come from families of very high socio-economic status, even when compared to students who are planning to attend other graduate schools."[3] With modest adjustments, that statement, then based chiefly on studies by Warkov and Zelan,[4] Stevens,[5] and Baird,[6] received some support from recent research.

In their study of the Chicago bar, Zemans and Rosenblum[7] provide an analysis of mail questionnaires completed by 548 attorneys. Noting that commentators have long witnessed the high social status of lawyers in America, and that high social status is no doubt part of the attraction of the legal profession to prospective lawyers, they remind us also that the legal profession has long been thought to be a route for upward social mobility in America. With respect to the Chicago lawyers studied, Zemans and Rosenblum found that they came more often than not from the upper strata of society, yet just over 40 percent of them came from lower status and backgrounds.[8] Is the cup half-empty or half-full? We lack a definitive standard for judging what distribution of backgrounds would be a just one. The percentage of lawyers from relatively high status backgrounds, in the aggregate, seems not very different from the percentages of such in other professions. And it is noteworthy that the high status backgrounds of many lawyers can be attributed to a lawyer parent. Further, Zemans and Rosenblum found that the influence of family on career choice is a function especially of high status families. In other words, high status families tend to influence their children toward careers on roughly the same (or higher) social levels as that of the parents. Lawyers with lower status family backgrounds were less likely to refer to family influence as a factor in their decisions to become lawyers. Lawyers from lower status backgrounds essentially got there "on their own,"

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3. *Id.* at 237.
4. S. WARKOV & J. ZELAN, LAWYERS IN THE MAKING (1965).
5. Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551 (1973).
6. L. BAIRD, THE GRADUATES: A REPORT OF THE CHARACTERISTICS AND PLANS OF COLLEGE SENIORS (1973).
7. F. Zemans & V. Rosenblum, The Making of a Public Profession (manuscript copy), Ch. 3. (At the deadline for printing this report, the Zemans-Rosenblum study was available only in galley proofs. Thus here we cite only to chapters and to tables).
8. *Id.*

raising a serious question about the degree to which lower status families see upward mobility as an objective to be pursued through a legal career.

A related concern is that upward mobility through the legal profession may have been easier in former times than it is today, as access to law school has become more competitive. Access to law school has been increasingly restricted to those who may be considered an academic elite, and in turn academic success is known to be strongly correlated with family socio-economic status. But Zemans and Rosenblum find little change over time in the percentages of lawyers who come from lower status backgrounds. Of course the limits of their findings are contained in the lifespans of the lawyers they surveyed, but Zemans and Rosenblum suggest that the situation has been stable for some time now.

It should be noted here that Zemans and Rosenblum found no significant relationship between the occupation of attorneys' fathers and either the practice context (large firm, small firm, solo practitioner, etc.) or the prestige of the specialty by Chicago attorneys.[9] There was, however, a significant relationship between the prestige of the law school attended by Chicago attorneys and their fathers' occupation, but the relationship did not hold when the nine schools which produced the most Chicago attorneys were examined separately. There the relationship between the relative prestige of each of the nine schools and the occupations of the attorneys' fathers was obscured by the relatively large numbers of lawyers with fathers of high occupational status who attended IIT-Chicago Kent and John Marshall law schools. Zemans and Rosenblum suspected that the attendance of students from high status backgrounds at relatively less prestigious schools was due to the weaker academic credentials of such students. Thus high status backgrounds may support entrance to law school even when coupled with relatively low academic performance.[10]

There have been some changes in law student enrollment over the last decade that are worth noting. Between 1969–70 and 1979–80 the number of black law students rose from 2,128 to 5,257; Mexican-American law student enrollment rose from 412 to 1,558 and total minority enrollment rose from 2,933 to 10,008. This was while total law school enrollment went from 68,386 in 1969–70 to 122,860 in 1979–80, so that the percentage of minority enrollment rose from 4.29 percent to 8.14 percent of the total. More dramatic changes occurred with women. In 1969–70 there were 4,715 women law

9. *Id.* Ch. 5.
10. *Id.*

students; in 1979–80 there were 38,627. Thus the percentage of women law students rose from 6.89 percent to 31.15 percent in a decade. The changes in female enrollment are certainly more encouraging than those for minorities, but nonetheless it is no longer fair to say that law students are overwhelmingly white males.[11] Moreover, it is appropriate to note the contribution that has been made by the Council on Legal Education Opportunity (CLEO) in assisting disadvantaged students in gaining admission to law schools.

What policy issues can be raised in connection with the limited findings reviewed above? Most obvious is the goal that access to the legal profession be based on merit, rather than social origins, yet even if access is based entirely on academic merit (as measured by GPA and LSAT), we know that academic success is correlated with socio-economic status. Of course, inequality of education is a social problem that begins with nursery schools and persists throughout the educational process. In most of its manifestations educational inequality is beyond the capacity of legal educators or the organized bar to influence or cure. Nonetheless, two issues are within our legitimate concerns. The first is the degree to which admission practices should be directed toward compensating for prior educational disadvantage —an "affirmative action" question already addressed many times, and now included in accreditation requirements.[12] It is worth asking, however, whether by emphasizing undergraduate grades and the LSAT as the principal criteria for admission, we may have produced (especially when competition for admission is intense) lawyers who are intellectually "overqualified" for the routine practice of law. That is to say only that it is possible that the practice of law is often less demanding intellectually than are selective criteria like the LSAT and intensely competitive law school classes. Should that be true, there should be room in admission processes for alternative criteria, for example, provision that certain career orientations, like the desire to serve the disadvantaged, would count positively toward admission (once

11. ABA REV. OF LEG. EDUC. 60–61, 63–64 (1979).

12. Standard 212 of the ABA Standards for the Approval of Law Schools, adopted August 5, 1980, provides:

> Consistent with sound educational policy and the Standards, the law school shall demonstrate, or have carried out and maintained, by concrete action, a commitment to providing full opportunities for the study of law and entry into the profession by qualified members of groups (notably racial and ethnic minorities) which have been victims of discrimination in various forms. This commitment would typically include a special concern for determining the potential of such applicants through the admission process, special recruitment efforts, and a program which assists in meeting the unusual financial needs of many such students, provided that no school is obligated to apply standards for the award of financial assistance different from those applied to other students.

minimum acceptable academic and test standards are met). We do not mean to suggest that a two-tiered system of legal education should be established, with one standard for those who would provide service to large business entities, for example, and another for those who would provide service to the disadvantaged. To the contrary, we suggest that too much attention may now be paid to grades and LSAT scores across the range of law schools, without sufficient regard for other attributes.

The second issue is financial. Should qualified students be able to attend law school regardless of their ability to pay for their education? Not enough financial aid is presently available for that, and given rising educational and living costs, the situation is probably getting worse rather than better.

The ideal of equal access to legal education is not just to be valued as an end in itself. There may be reason to be concerned about the values and attitudes that are attendant to relatively high socio-economic backgrounds. For example, Warkov and Zelan suggested that:

> One question that presents itself immediately is whether the distribution of lawyers to clients will follow the student patterns revealed in this research. If there is such a distribution, the law schools can expect continuing disappointment in any efforts to produce lawyers who will want to represent the criminal, the underprivileged, or the family in trouble. Aiding the weak, the oppressed, the poor and the needy is not the likely end product of a professional system so status oriented in its roots.[13]

Although they raised an important issue, they lacked the data to answer it. As a matter of abstract logic, it is not necessarily the case that lawyers from lower status backgrounds will be more likely to serve the disadvantaged than will lawyers from higher status backgrounds, yet most of the information we have tends to support Warkov and Zelan's concern. Stevens found that women, blacks, and students with parents with relatively low family income were all more likely to cite service to the underprivileged as a motivation for entering law school than were other students.[14] Thus, like Warkov and Zelan, Stevens suggested that, "law schools which really wish to provide more lawyers for the poor may have to consider excluding at least some students of affluent families."[15]

On the other hand, Zemans and Rosenblum concluded that while socio-economic background seems to affect aspirations and abilities, including academic performance, it provides no explanation for the particular context in which law is practiced or for the prestige of the legal specialty of practi-

13. WARKOV & ZELAN, *supra* note 4, at xviii-xix.
14. Stevens, *supra* note 5, at 613–14.
15. *Id.* at 614.

tioners. They also found that about 40 percent of the Chicago attorneys they studied came from lower status backgrounds, so the bar, at least in Chicago, appears not to be as homogeneous or as elite as critics sometimes suggest. Yet it may well be that status permeates the profession in a variety of ways so as to produce the outcome that Warkov and Zelan fear. Elsewhere we will examine further the careers of the attorneys studied by Zemans and Rosenblum, and we will look at other evidence of the impact of prestige and status in the profession. Here we will review the reasons attorneys and students give for attending law school to see what light those motivations may shed on Warkov and Zelan's question.

2. WHY GO TO LAW SCHOOL?

Warkov and Zelan measured the occupational values associated with various careers. Their profile of prospective lawyers (class of 1969) provides an interesting beginning:

> Specifically, future lawyers consider the following values important: making a lot of money; a chance to help others and to be useful to society; freedom from supervision; and an opportunity to work with people. In contrast to non-lawyers, they attach less importance to originality and creativity; avoidance of a high-pressure job, and the need for steady progress rather than a boom-or-bust career.[16]

Robert Stevens asked graduates of the class of 1960 and students in the classes of 1970 and 1972 from six schools why they had chosen to attend law school.[17] The dominant responses were close to a tautology—they entered law school to become lawyers—or as Stevens put it they chose law school "seeking intellectually stimulating professional training."[18] Hedegard's ABF study of Brigham Young University (BYU) law students found much the same (a desire for intellectual stimulation, interest in the subject matter, and a desire for professional training headed the list).[19] Zemans and Rosenblum's study of the Chicago bar also found interest in the subject matter and desire to practice law at the top of their respondents' lists of reasons for attending law school. To put it simply, law students and lawyers generally report that they went to law school because they wanted to become lawyers—hardly a surprising outcome, but one that may have implications for the sort of education they expect.

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16. WARKOV & ZELAN, *supra* note 4, at 12.
17. Stevens, *supra* note 5 at 575 *et seq.*
18. *Id.* at 576.
19. Hedegard, *The Impact of Legal Education: An In-Depth Examination of Career Relevant Interests, Attitudes and Personality Traits Among First Year Law Students*, 1979 ABF RESEARCH J. 793, 814.

The lure of prestige and money are muted in the aggregate responses in all three studies, prestige generally ranking above financial rewards as a reason, but both ranking well below the reasons cited above. When students are asked to characterize the motivations of other law students, the results may be different. Pipkin reports that 94 percent of his respondents characterized their fellow students as "concerned about making money."[20] In Stevens' study, prestige and money were more likely to be attractions to white conservative males than to blacks or to women. But in the aggregate, responses seem to indicate that money and prestige are less important than we might expect. It may indeed be that money and prestige are not especially strong inducements. Or it may be that students, many of whom come from relatively high status backgrounds, assume that reasonable amounts of money and prestige will be part of their lots in life, whether their careers be in law or not.[21] It is also possible that admissions that money and prestige are important motivations are constrained by norms having to do with the way we present ourselves to others. Such admissions (even in confidential interview or survey settings) may contravene such norms. On the point that money may be more important than studies of law students alone might indicate, Zemans and Rosenblum cite Davis' work on undergraduate career choices, which showed that freshmen intending careers in the law (like business majors) place relatively high value on making money.[22]

The Zemans-Rosenblum study also found that "lawyers from blue collar family backgrounds are significantly more likely than those from professional backgrounds to cite upward mobility reasons in the aggregate as important in their decisions to attend law school."[23] A quick reaction is that such a finding casts some doubt on Warkov and Zelan's estimation that lawyers from lower status backgrounds are more likely to serve the underprivileged, but Stevens found that law students from families with lower incomes were more likely to cite service to the underprivileged as a reason for attending law school. It makes some sense to say that students from low

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20. Pipkin, *Law School Instruction in Professional Responsibility: A Curricular Paradox*, 1979 ABF RESEARCH J. 247, 274.

21. A point made by Zemans and Rosenblum, *supra* note 7, at Ch. 3.

> This apparent inconsistency may simply reflect the nature of career decisions as a two-stage process, with preferences for above average income affecting the narrowing of career choices but not the selection of law in particular. Consistent with this interpretation, and with Davis' findings, better than one-half of those who entered law school with other career goals had business in mind. For these attorneys, at least, even if they highly valued above average income, that may not be what drew them specifically to the law, but rather to the range of choices.

22. *Id.* Ch. 3 (citing J. DAVIS, UNDERGRADUATE CAREER DECISIONS).

23. *Id.* Ch. 3.

status backgrounds may be able to achieve upward mobility while serving the underprivileged. Boyer and Cramton cite studies in which many students with concern for aiding the underprivileged also anticipated rather high incomes. As they concluded, "At the least, it appears that many regard law as a profession where one can 'do good while doing well.' "[24]

In Stevens' study, the desire to help the underprivileged received a low to middle ranking as a reason for attending law school except among Yale students from the class of 1972,[25] and in Hedegard's study only 18 percent of the BYU students ranked such a desire as being of great importance in their decisions to enter law school.[26] But as we have noted before, these aggregates mask differences between groups of students. Remember that women, blacks, and students with parents of relatively low family income are more likely to cite service to the underprivileged as a reason for attending law school. Stevens discusses differences that exist between generations as well.[27] On a somewhat related item, "A desire to restructure society" was ranked as a reason of great importance by 31 percent of BYU students and by 57 percent of the Yale students of the class of '72.[28] Zemans and Rosenblum report that about 18 percent of the Chicago lawyers they studied ranked "an opportunity to be helpful to others and or useful to society in general" as an important reason for entering law school.[29] Erlanger and Klegon report that entering Wisconsin law students were at least moderately inclined toward reform and *pro bono* work,[30] and Katz and Denbeaux found that the opportunity to be of "great service to the community" ranked third among a list of factors affecting students decisions to become a lawyer.[31]

What can we make of these findings? The image is cloudy. Probably the values of the reader will have much to do with the conclusions drawn. Clearly, most students choosing law school desire to become lawyers and to be trained for the practice of law, but whether they are motivated chiefly by ambition, greed, or various altruistic impulses is not clear. If among our objectives we value a strong public service orientation for the legal profes-

24. Boyer & Cramton, *supra* note 2, at 247.
25. Stevens, *supra* note 5, at 579.
26. Hedegard, *supra* note 19.
27. Stevens, *supra* note 5, at 579.
28. Hedegard, *supra* note 19.
29. Zemans & Rosenblum, *supra* note 7, at Ch. 3, Table 3.1.
30. Erlanger & Klegon, *Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns*, 13 L. & SOC'Y REV. 11, 20 (1979).
31. Katz & Denbeaux, Alteration or Elaboration: Does Law School Instill Cynicism?, unpublished paper presented at the National Conference on Teaching Professional Responsibility, at 21 (Table 10) (1977).

sion, then there is enough negative evidence to cause some disquiet. Students who choose to become public school teachers, clergy, or social workers have no reason to expect great financial rewards for their services, yet many choose those careers. Are law students very much different? Davis' study of undergraduate career choices reveals that students choosing law and business are attracted by the prospect of financial rewards; students choosing education as a career tend not to be attracted by money; students interested in medicine are attracted by the prospect of working with people more than by money.[32] The Davis study was, however, published fifteen years ago. A current, large-sample, in-depth study would provide better answers than we have now.[33]

3. How Do Students Select Law Schools?

Boyer and Cramton, relying chiefly on Baird and Stevens, reported that the most important factor in law school selection was the "academic excellence of the school—that is, its reputed quality or prestige."[34] It is important to emphasize the word "reputed" in their statement, for as both they and Stevens before them noted, "notions of quality and prestige appear premised more on nebulous general school reputation than on specific knowledge."[35] Boyer and Cramton were concerned about the quality of information employed in choosing law schools, especially given that the admission/school selection process may affect the nature of a lawyer's practice and eventual financial rewards. They especially noted the question of whether school selection channels the "best" students to the "best" schools, an outcome the desirability of which they questioned.[36] We have not obtained additional data about the quality of information with which such decisions are made.

Stevens focuses on the class of 1972 when he examines the process of choosing law schools. While he found that quality, attraction of a particular

32. Davis, Undergraduate Career Choices, Ch. 3.

33. As Boyer & Cramton argued:

> In short, research into the motives that bring people to law school can have multiple purposes in a broad program of studies on legal education. It can serve as a baseline for evaluating the socializing effects of the law school, providing a measure of the influence of legal education in altering motivations, goals, and beliefs. It also may affect teaching methods and curriculum, suggesting approaches that, on the one hand, take advantage of the students' existing orientation, or on the other hand, attempt to change or counteract student desires. Finally, to the extent that initial motivations foreshadow law school performance or eventual career activities, they must suggest a better approach to selecting future lawyers than the present emphasis on purely intellectual and academic performance credentials. *Supra* note 2, at 253–54.

34. *Id.* at 254.

35. Stevens, *supra* note 5, at 625.

36. Boyer & Cramton, *supra* note 2, at 255.

community or area, and prestige are the most important factors in the aggregate, the situation was more complicated when students at particular schools were viewed separately. Location, a particular curriculum, tuition costs, and job opportunities while attending law school were more important factors in particular circumstances.[37]

Zemans and Rosenblum, again analyzing their sample of Chicago attorneys, devoted considerable attention to the choice of law schools. Their study is different from the previous ones because it focuses on lawyers in a single metropolitan area, rather than on students in law schools. Once again the reputed quality of a school was by far the most important factor, but among Chicago lawyers that is followed, though at a distance, by work opportunities during law school, a desire to practice in the community or state in which the law school is located, prestige of the school, and educational costs. They note that the importance of financial factors is strongly associated with lower status backgrounds and that lawyers from such backgrounds are more likely to have attended school part-time.

Financial reasons have apparently not declined in importance, although over time the increased availability of financial aid may have reduced the need for outside work during regular school terms. Additionally, opportunities for summer employment in law firms have increased, especially after the second year.[38]

37. Stevens provides a good, brief summary:

> In summary, while quality, attraction to an area, and prestige are of primary interest to all entering students, there are subgroups of motivations by schools. Students at Boston College and Stanford cited quality of the school as their first choice and the area of the school second. Students at Yale apparently chose first on the basis of perceived quality, and second for the supposed social science orientation of the curriculum. Those at Michigan also ranked quality first, but noted the prestige of the school as their second choice. At Iowa, quality and cheaper tuition were most important; at Connecticut Day cheaper tuition ranked first, followed by desire to practice in the state. At Connecticut Evening job opportunities for students and spouses were most important, followed by the desire to practice in the state. *Supra* note 5, at 628.

38. Zemans and Rosenblum, *supra* note 7, at Ch. 3. See also the following recent interpretation:

> **Interpretation of Standard 305(a)(iii)**
> **(15-Hour Rule)**
>
> The Council at its August 1980 meeting, upon recommendation of the Accreditation Committee, amended the present interpretation of Standard 305(a)(iii) changing the limitation of outside employment of full-time students to 20 hours per week rather than 15. The new interpretation was adopted as follows:
>
> Interpretation of Standard 305(a)(iii): A student may not work in excess of 20 hours per week while attending a law school on a full-time basis. The law school has the burden to show that it has adopted and enforces policies assuring that full-time students devote substantially all working hours to the study of law, including policies relating to class scheduling, attendance re-

But above all, the location of the bar was Zemans and Rosenblum's most salient finding. Of their sample 63.2 percent were trained in metropolitan Chicago schools and more than 70 percent were trained in Illinois.[39] Moreover, only about 5 percent "did not grow up, go to college, or attend law school in Chicago or the Midwest."[40] And Zemans and Rosenblum cited Carlin in support of the point that their findings are probably not an idiosyncrasy of Chicago but that "lawyers tend to be drawn from law schools within the same geographic area in which they practice."[41] The "outsiders" among the Chicago bar are different from the "locals." They are more likely to have had better law school credentials and to practice in firms.[42]

Prestige of the law school chosen was cited by about 25 percent of the Chicago attorneys, but again the aggregates conceal some interesting differences. Lawyers from blue collar families were much less likely to cite prestige as a factor (or to have attended prestige schools). When the nine most frequently attended schools were ranked by the percentage of their graduates who ranked prestige as an important factor in law school selection, an implicit ranking of law schools emerged.[43] Time and again in reviewing these studies we will see that "pecking orders" of credentials, schools, professors, context of practice, legal specialties, and even particular law school subjects appear in the analysis. We will note them as they arise. Eventually we will examine the possible consequences of these phenomena and the implications they may have for legal education.[44] But this initial subsection, dealing with questions arising from the choice of law school and a legal career, has only brought us to the threshold of what happens during law school.

B. QUESTIONS ABOUT LAW SCHOOL

Now we begin to focus on what happens during law school. Up to this point we have only posed questions about the background characteristics and motivations associated with choosing law as a career and with choosing to attend law school. Here we will review information derived both from law

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quirements, and performance standards. These restrictions also apply during summer sessions for students enrolled therein.

This interpretation of Standard 305(a)(iii) is a return to the policy existing prior to 1975 when the 15-hour limitation was established. The adoption of the "20-Hour Rule" was supported by a recommendation submitted by a majority of the deans attending the February, 1980 Deans' Workshop.

39. Zemans and Rosenblum, *supra* note 7, at Ch. 3, Table 3.12.
40. *Id.* Ch. 3.
41. *Id.* Ch. 3 (citing J. CARLIN, LAWYERS ON THEIR OWN (1962)).
42. *Id.* Ch. 5.
43. *Id.* Ch. 3, Table 3.14.
44. *See* especially the conclusions in Section IV, F. *infra*.

students and from practicing attorneys, who in certain instances have been asked to look back on their legal educations and to evaluate them in light of their experiences in the practice of law.

1. How Do Students Evaluate Their Legal Educations?

In one view, current students are not in a very good position to evaluate their legal educations. That view holds that such evaluations can become meaningful only as students are able to assess the adequacy of their educations in the context of the actual practice of law. There is something to be said for that point of view, and it serves as a useful caveat against drawing hasty or unwarranted conclusions. But another point of view holds that student evaluations are important because of the immediacy of the experience that produces them. At least, students are not required to rely on dim retrospection when speaking of their legal educations. As the immediate consumers of legal education,[45] students ought to have their say; we can always compare their views with those obtained from other audiences.

The Warkov-Zelan study, based on a 1962 survey, reported a variety of measures (caliber of classroom teaching, curriculum research opportunities and facilities, caliber of students, and knowledge and professional standing of faculty) on which a substantial majority of first-year law students gave their schools excellent or good marks.[46] Stevens' research, undertaken between 1969 and 1971, had only one set of items bearing upon general reactions to law school, and that was administered to the class of 1960 at six schools and was compared with a separate Harvard alumni. Alumni were asked to choose words that described their feelings about their law schools. *Pride*, *respect*, and *affection* were most often chosen (usually by more than a majority) and words like *indifference*, *irritation*, *pain* or *outrage* were rarely chosen (usually by five percent or less).[47] Stevens also elicited comparisons between law school and college education from the current and former law students in his sample. The results were mixed. Students from the class of 1960 tended to regard law school as having been more stimulating and difficult than college, but the class of 1970 more often than not had fewer students who saw law school as more difficult and stimulating than college had been. A majority of the classes of 1960 and 1970 viewed law school as more competitive than college, but the class of 1970 included

45. *See, e.g.*, Pipkin, *Legal Education: The Consumers' Perspective*, 1976 ABF RESEARCH J. 1161, 1162.

46. WARKOV & ZELAN, *supra* note 4, at 70–75.

47. Stevens, *supra* note 5, at 593; *see also* Table A.19 at 698.

students from some schools in which perceptions of competitiveness had increased, while perceptions of competitiveness had declined in other schools. When students were asked to compare the quality of law school teaching with college teaching, fewer students from the class of 1970 gave positive comparisons of law school teaching than did students from the class of 1960, yet students from the class of 1970 generally reported better relations with faculty than did the class of 1960. In summary, the results were sufficiently mixed to belie clear conclusions, though there was a slight tendency toward more negative evaluations in the class of 1970.[48] Of course, as Stevens duly noted, the class of 1970 may have had some peculiar generational features (e.g., the Vietnam War) that might have made it unrepresentative of long-term trends.

In one of the ABF studies, Pipkin asked students at seven schools during 1975–76 to rate law school on a four-point scale from boring to stimulating and interesting.[49] The average response for all students was close to the third scale point (generally interesting with some periods of boredom), but it is notable that the most positive evaluations came in the first year, while reported interest declined in both the second and third years. Pipkin also asked students to rate their satisfaction with law school on a five-point scale ranging from highly satisfied to highly dissatisfied. The average for all students was near the moderately satisfied point, but once again satisfaction was highest in the first year and declined in the second and third years. Such general assessments of legal education are much too vague to be very helpful in framing remedial recommendations, but Pipkin helped by further examining the associations of other variables with "interest" and "satisfaction." We will look at these more closely below,[50] but his conclusions can stand on their own here:

> Among students at both the national and regional schools, *satisfaction with law school and interest in law school are related to the perception that their legal educations include a rational pedagogy, adequate professional preparation, and instruction from faculty committed to teaching and to ethical issues.* Their level of satisfaction and interest in law school

48. *Id.* at 586–89. Note especially the following:

> In summary, the view of the law school experience seems to have changed over the decade. Differing perceptions of the relative competitiveness among schools may reflect reversion to a common mean, as students at our schools came increasingly to resemble each other. But the data raise a number of important underlying questions. The most fundamental is the extent to which law school is, and should be regarded as, an intellectual experience, akin to graduate education in the arts or social sciences. It is a question that the law schools themselves have not yet answered. *Id.* at 589.

49. Pipkin, *supra* note 45, at 1176–78.

50. *See* Section IV.F, *infra* for general conclusions.

> is tied to whether they believe this is what they are receiving. (emphasis added.)[51]

One point worth noting is that the many polemical attacks on legal education written by current or recent students and published through the years are probably not representative of student evaluations of legal education. That is, such articles create an impression of calamity and crisis (or irritation, pain, and outrage),[52] whereas representative surveys do not. That disparity should not be surprising, for rarely do the contented take up pens to write paeans of praise. Discontent is a more vigorous motivator. This is not to say that the polemicists necessarily are wrong, but merely that they are not representative. Nor is it to say that the fairly good general marks given legal education by students sustain the conclusion that all is as it should be. As more specific questions are framed, we shall see that such appears not to be the case. Initially, the declining evaluation of law school across the three years should cause us some concern.

2. How Much Time and Energy Do Students Invest in Law School?

Both Robert Stevens and a recent ABF study by Ronald Pipkin[53] have examined the ways law students use their time. Stevens used a set of nine questions administered to the class of 1970, which was designed to elicit levels of intellectual involvement across the three law school years. Six items dealt with the amount of time and effort students put into classes; three items dealt with attitudes toward their work. The aggregates from the six schools showed a sharp decline after the first semester and a continuing decline through the balance of the law school years on the time and energy invested by students. Positive attitudes toward work also declined initially, but they became relatively fixed by the third semester.[54] Stevens summed up his findings in the following:

> In short, the popular conception of law student life as a mixture of long hours pouring over casebooks and endless discussions of the con-

51. Pipkin, *supra* note 45, at 1177.
52. Stevens, *supra* note 5, at 698, Table A.19.
53. Pipkin, Law Student Activity Patterns, ABF manuscript to be published in 1982.
54. Stevens, *supra* note 5, at 653, especially:

> For example, in the first semester, virtually no one spent fewer than ten hours per week studying. By the fifth semester, approximately one-fourth of the students devoted only that amount of time to their studies. Similarly, in the first semester virtually no one reported merely reading the material as his most frequent method of class preparation. In the fifth semester, the figure was about six out of seven. Finally, during the first semester, only a third of the students reported "seldom or hardly ever" participating in informal discussions. By the fifth semester, the percentage had risen to about two-thirds of the interviewees.

> tents of those books is more myth than reality. By the fifth semester many students have the equivalent of a two-day work week and discuss their studies rarely, if at all. At least intellectually law school appears to be a part-time operation.[55]

According to Stevens, in law school, the law appears not to be such a jealous mistress after all.

While over half the students reported that they were tense during the first semester and slightly less than half described the first semester as stimulating and difficult, by the fifth semester about 5 percent were tense and found their studies to be difficult, and about 20 percent found their work to be stimulating. Stevens reported rough developmental stages: relatively high involvement during the first semester, followed by rapid fall-off to an intermediate level of involvement; and in the third or fourth semester a further decline followed by a leveling off to a continuing equilibrium.[56] With minor variation this pattern held for the six schools studied.

A particularly interesting finding was that, "frequent contacts with upperclassmen tend to speed up the relaxation process, reduce the number of hours studied during the week, and reduce the frequency of informal discussion of class related material."[57] Such a finding underscores the importance of informal socialization amongst peers.

Pipkin's study was designed to speak specifically to the issue of student time use. His sample of nearly 1,200 students, representing the three class years at seven law schools, completed time diaries in which activities were recorded at fifteen minute intervals for seven days. Half of the sample kept these records for the week of October 26 through November 1, 1975—about the eighth week into the fall term—and the second half kept diaries for a week between March 28th and April 17, 1976—the tenth to twelfth week of the spring term, depending upon the school. Time diaries, unlike questionnaires seeking time use information, provide data that do not require the individual to make summary estimates or rely solely upon recall. Therefore, this study is remarkable for the quality of its data, its complexity, and breadth and depth of information. Although the study was cross-sectional, not longitudinal, aggregate semester differences in activity patterns can be taken as strongly suggestive of the time dimensions in the law student's academic career.

Pipkin, like Stevens, found that students have a steady disengagement

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55. *Id.* at 653.
56. *Id.* at 654.
57. *Id.* at 657.

from law school over the three years, but at a rate that is much less alarming than suggested by Stevens. On average, during the week of the fall survey, first year students spent about thirty-six hours in study, compared to twenty-seven by second year students, and twenty-four by third year students. In the spring, when final exams were only a few weeks away from the surveyed period, first year students studied an average of thirty-three hours, second year students twenty-nine hours, and third year students, twenty-six hours. For each group, study time was slightly over two and one half hours for each hour spent in class (upper year students spent less time in classrooms).

Of the major activities related to school involvement, study time was the most subject to individual variation. The co-efficient of variation (a statistical measurement of dispersion) for this activity increased each semester, indicating that while the group average declined as students moved into the advanced curriculum, students also increasingly differed from one another in how much time they studied. Time allocated to study is determined by a complex matrix of contextual and individual variables, including differing course demands, quality of study environments, alternative claims on time, health, intellectual skills, time organizing abilities, and interest. These states vary across students and time, however they are most alike during the first year when the curriculum is largely required and students face similar obligatory demands from the institution. As students take the elective curriculum, they are provided greater latitude in shaping, and conforming to, time demands. Consequently, the greater variation in time use parallels the greater flexibility in individual choice granted by the institution.

Except for the first semester, where it was slightly higher, time spent in study accounted for about sixty percent of all school involvement. Considering this to be time spent in class, study, clinics, student organizations, and miscellaneous other activities that are law school tied (other than on campus job hunting), students surveyed in the fall term averaged fifty-three, forty-six, and forty-five hours, respectively by class year, in school activities. During the spring term the hours were fifty-four, fifty, and forty-three, for each class year, respectively. The decline in involvement amounts to about ten hours during the week, but the absolute level of involvement does not suggest wide-scale sloughing.

Given the presence of this previously noted entropic process in legal education, it is appropriate to ask what activities picked up this energy? Much of the decline in study time seems to have been absorbed by involvement in student organizations and clinical programs. But most of it went to activities outside of school. Those who were employed part-time traded off study for work time at a rate of one hour and forty minutes of study time for each

hour of work. Those who did not have part-time jobs took more leisure time. Higher amounts of leisure accounted for about six of the ten hours "freed up" between the first and last semesters. The increase was primarily in social behaviors—dating, parties, and social entertainment—activities that normally engage discretionary time in populations composed largely of young, unmarried adults. There was also some indication that students in the third year, but not the second, used some of the freed up time to get more sleep.

Pipkin's sample included students who spent very little time in school activities (one attended no classes and played cards about ten hours a day) and some who spent an enormous number of hours with the books (the highest was eighty-eight hours, exclusive of classes). While the images provided by those extreme life styles may contribute to, or undermine, myths about law student life, they are not empirically significant. Contrary to Stevens, Pipkin found that most law students were actively involved in law school and treated their legal educations like a demanding full-time job. Over time there is a general tendency toward greater disengagement from legal education, but clearly the norm was not relaxation after the first year.

3. How Do Current and Former Students View Their Law School Curricula?

Stevens asked students at eight schools from the third year class of 1970 for their views on the curricula of their law schools. He employed three continuua, asking students where on the continuua they felt their law schools fell, and where they would like them to be. The three continuua were: (1) theoretical to practical; (2) social problem oriented to "Wall Street" oriented; and (3) innovative to traditional. Seventy-five percent of the students saw the curricula at their respective schools as being on the theoretical side of the theoretical-practical continuum; 14 percent thought their schools had achieved a balance between the two; and only 11 percent thought their schools had curricula that were on the practical side. Turning to the "oughts" —the students tended to favor a balance between the two alternatives, although at each school the students desired the curriculum to be more practical than they felt it had been.[58]

The students thought that the curricula at their schools were oriented more toward social problems than toward business, but the "tilt" toward a social problem orientation was not especially pronounced. The students felt that the curricula should be even more social problem oriented than they perceived they had been.[59]

58. *Id.* at 659–661.
59. *Id.* at 661–63. This was especially strong at Yale and Stanford.

Finally, students considered the curricula at their schools to be innovative, but they strongly favored even more innovative curricula. This result is hardly surprising. The words "traditional" and "innovative" seem to evoke predictable responses that may be largely devoid of content unless made more precise.[60]

Zemans and Rosenblum cite the conventional wisdom that high prestige law schools tend to concentrate on theoretical aspects of the law while giving only limited attention to practical training. At the other extreme, conventional wisdom suggests that lower prestige schools tend to teach to bar examinations. Zemans and Rosenblum tested these notions by asking the Chicago lawyers in their study about the perceived goals of their law schools. Nearly three-fourths of the lawyers thought that teaching students to think analytically was a major goal of their law schools. Sixty-four percent agreed that a major goal of their law schools was the provision of a good basis for the practice of law, and just more than half the lawyers saw the provision of a theoretical basis of the law as a major goal. These figures become more meaningful when the lawyers are divided into the graduates of "national" and "nonnational" schools.

Nearly 92 percent of the graduates of national schools saw the teaching of analytical thinking as a major goal, while this was true for only 63 percent of the nonnational graduates. Only 50 percent of the graduates of national law schools thought that the provision of a good basis for the practice of law had been a major goal of their schools, while over 73 percent of the graduates of nonnational schools thought that that had been a major goal at their schools. Over 76 percent of the graduates of national schools perceived a theoretical orientation at their schools, but just over 34 percent of the graduates of nonnational schools thought that to have been true of their schools. Finally, less than five percent of the graduates of national schools thought preparation for the bar examination had been a goal at their schools, while over 58 percent of nonnational graduates agreed that had been a major goal of their schools. The differentiation between national and nonnational schools appears to be solidly consistent with the cited conventional wisdom.[61] When the Chicago lawyers are divided into groups according to their years out of law school, it appears that theoretical understanding has grown as a major goal over the years.[62] And when the graduates of particular schools are examined separately, the differences are sometimes most pronounced. Gradu-

60. *Id.* at 663–64.
61. Zemans & Rosenblum, *supra* note 7, at Ch. 3.
62. *Id.* Ch. 3, Table 3.17.

ates of the University of Chicago Law School, for example, were least likely to agree that providing a basis for the practice of law was a major goal of their school, most likely to agree that provision of the theoretical basis of the law and teaching analytical thinking were major goals, and not one graduate thought the preparation for the bar examination had been a major goal of the University of Chicago Law School.[63] It is appropriate to note that the University of Chicago Law School represents the extreme case in this analysis. When all of the nine schools that educate most of the Chicago bar are compared, no single or simple explanation of their ordering of objectives is entirely appropriate.

Pipkin's ABF study found that students "tend to believe law school fails to provide them with practical professional information."[64] His finding was based on interpretation of a three-item scale, the scale items having to do with whether law school gives a good sense of the professional tasks of the lawyer, whether law school has taught the skills necessary to handle clients' simple legal problems, and whether one can learn more by summer work in a law firm or governmental legal agency than one learns in most law courses.[65]

These student evaluations of curricula, while still rather general in nature, are more helpful than broad unspecified expressions of content or discontent. Stevens and Pipkin both found student support for a more "practical" curriculum.[66] The next step, of course, is to attempt to discern what a more "practical" curriculum would be like.

Stevens asked the classes of 1960 and 1970 how much emphasis they thought their schools *had* placed on certain legal skills and how much emphasis their schools *should have* placed on the same skills. Both classes thought the "ability to think like a lawyer" was the most important skill actually taught in law school, and the students endorsed that emphasis, holding that their schools should have placed even more emphasis on that skill than they had. The phrase "thinking like a lawyer" is a persistent one, but one with elusive meaning. Presumably this is what law schools are about, especially in first year courses taught by the "Socratic" method, that is, the analysis and synthesis of facts and legal concepts.[67]

Questions about other "skills" produced more complex results. Knowledge

63. *Id.* Ch. 3.
64. Pipkin, *supra* note 45, at 1176.
65. *Id.* at 1169.
66. For a discussion of law school curricula, which examines the "hierarchy of courses," as they are ranked in importance by law students, see Pipkin, Student Responses to the Law School Curricula (unpublished ABF manuscript (1977)).
67. Stevens, *supra* note 5, at 593, 699 (Table A.20).

of legal rules was thought to have been emphasized at all schools, save Yale, by the class of 1960, but students in the class of 1970 at all schools reported much less emphasis on substantive rules of law than had been the case ten years before. Equally, graduates from the class of 1960 at all schools but Yale thought that substantive legal rules deserved emphasis, but by 1970 only at one school did most students think that knowledge of substantive legal rules merited great emphasis. Much less emphasis was reported on knowledge of procedural doctrine and rules at all schools, but both the classes of 1960 and 1970 at all schools felt that greater attention to procedural rules was warranted.[68]

Both classes uniformly reported relatively little emphasis on legal research and writing, with even less emphasis often reported by the class of 1970. Both classes gave strong support for greater emphasis on legal research and writing than they had experienced themselves.[69]

Very few students from either class felt that their schools had put great emphasis on communication skills (including counseling and interviewing), on ability to negotiate and arbitrate, on ability to investigate the facts of a case, or on proficiency at oral advocacy. In turn, both classes gave support to greater emphasis on these "practical" skills than they had had in their own legal educations.[70]

Of course, a decade has passed since these data were collected by Stevens, and it may be that law schools have already taken information like this into account as they have reviewed their curricula. All we can say at this point is that as of Stevens' study, there was substantial support among his sample of students and law graduates for a more practical, more practice-oriented curriculum than they perceived to have existed at their schools. These data do make more concrete what the class of 1970 meant when it favored a more practical curriculum on Stevens' practical-theoretical continuum. Stevens laid a good foundation for ABF research on curricular questions—what have the more recent studies found?

Pipkin's article on the student-consumer's perspective on legal education found, as we have noted above, that students at seven schools surveyed during academic year 1974–75 were, on the average, moderately satisfied with their legal educations, and found them to be generally interesting "with some periods of boredom." He also found that they tended to believe that their law school educations had failed to provide them with practical professional

68. *Id.* at 593–94, Tables A.21 & A.22, 699–700.
69. *Id.* at 594–95, Tables A.23 & A.24, 700.
70. *Id.* at 595.

information. Coupled with these measures, Pipkin asked the students in his sample to evaluate the degree to which each of the items on a list of changes in law school might increase their satisfaction with legal education. Taking the items that were most favorably evaluated in order of their average ratings by students, the following items topped the list: smaller classes, more feedback on academic progress, more teaching of practical skills, more information and advice for career planning, more assistance in securing outside employment, and more clinical experiences.[71] While these are somewhat less specific than Stevens' categories reviewed immediately above, they seem to run in much the same direction. Except for the desire for smaller classes and for more feedback on academic progress, which represents pedagogical concerns, the items seem to reflect practical and vocational concerns. Before commenting further on these results, it may be helpful to present the view of practicing attorneys on similar items as reflected in the Zemans-Rosenblum ABF study and in a few other surveys of practicing attorneys.

4. What Sorts of Knowledge and Skills Are Viewed by Practicing Attorneys as Important in the Practice of Law?

The Zemans-Rosenblum sample of Chicago attorneys was asked to evaluate "skills and areas of knowledge considered important to the practice of law and the sources from which lawyers believe they have been acquired." From a list of twenty-one items, ten were rated as important by three-quarters or more of the attorney-respondents.[72] Zemans and Rosenblum pointed out that the top four of these (fact gathering, capacity to marshall facts and order them so that concepts can be applied, instilling others' confidence in you, and effective oral expression) involve intellectual or interpersonal skills that are not peculiar to the legal profession. The next three items, in order of importance, involve skills that can be attributed more exclusively to the legal profession (ability to understand and interpret opinions, regulations, and statutes; knowledge of the substantive law; and legal research).[73] The last three items of the top ten were negotiating, drafting legal documents, and understanding the viewpoints of others to deal more effectively with them. These were the aggregate ratings. Correlations between the items revealed groups of skills, some of which, while relatively less important in the aggregate, are more important in association with particular specialties. The two major groups that Zemans and Rosenblum found reflect interesting differences. One group involves largely interpersonal skills;

71. Pipkin, *supra* note 45, at 1184.
72. Zemans & Rosenblum, *supra* note 7, at Ch. 6, Table 6.1.
73. *Id.* Ch. 6.

the other involves analytical skills, which may be regarded as being at the core of the process of learning to "think like a lawyer." The two groups meet and are both associated with skills that are central to litigation. The most central skill, fact gathering, thus seems to combine both interpersonal and analytic skills.

These groups become more meaningful when they are associated with particular substantive specialties. A lawyer's predominant substantive specialty is found to be the best predictor of importance ratings.[74] Tax lawyers and criminal lawyers turn out to be most distinct from one another, tax lawyers giving high evaluations to analytic and business skills and criminal lawyers chiefly valuing interpersonal and procedural skills. An abstract of the table of associations of skills with specialties seems sufficiently important to reproduce in a note here.[75]

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74. *Id.*
75. *Id.* Ch. 6, Table 6.2.

TABLE 6.2
One-Way Analysis of Variance of Importance of Selected Skills and Areas of Knowledge by Legal Specialty[a]

Skill or Area of Knowledge[b]	Significantly Different Specialties[c]	
Effective oral expression	Criminal[d] (1.3333)[e] Personal injury (1.3750) Family (1.4000)	Real estate (1.9219) Trusts and estates (2.0000)
Ability to understand and interpret opinions, regulations, and statutes	Tax (1.1765)	Personal injury (2.0175)
Legal research	Tax (1.2941)	Real estate (2.2344)
Negotiating	Family (1.4000) Personal injury (1.7193) Corporate (1.7320) Real estate (1.7424)	Trusts and estates (2.3171)
Drafting legal documents ...	Trusts and estates (1.5238) Corporate (1.5500) Real estate (1.6667)	Personal injury (2.5636) Criminal (2.7742)
Letter writing	Corporate (2.0800) Real estate (2.1846) Trust and estates (2.2143) Family (2.2800) Tax (2.4412) Personal injury (2.4727)	Criminal (3.0625)
Procedural law	Criminal (1.6875) Personal injury (1.7679)	Tax (2.8485)
Financial sense	Tax (1.9091) Corporate (2.0400) Real estate (2.2031)	Criminal (3.1875)

Zemans and Rosenblum also examined the associations between skills and the prestige rankings[76] of legal specialties. The result was that high prestige specialties seemed to be associated with analytical skills, while low prestige specialties seemed to rely more often on interpersonal skills. This is still another example of the ubiquitous role of prestige in legal education and the legal profession.[77]

Zemans and Rosenblum have provided some very interesting insights into the skills involved in the practice of law; the next step is to see how practicing attorneys believe these skills are acquired and thus how they relate to legal education. The sample of Chicago attorneys was asked to evaluate the degree to which their own experiences, their legal education, or the influence

Interviewing	Family (1.7200) Criminal (1.7273)	Trusts and estates (2.4524) Real estate (2.5313) Corporate (2.6970) Tax (2.8485)
Writing briefs	Criminal (2.2727)	Real estate (3.2581)
Opinion writing	Tax (2.2647)	Family (3.3600) Criminal (3.3750)
Accounting	Tax (2.2353)	Criminal (3.8387) Personal injury (3.9630) Corporate (2.7347) Trusts and estates (2.8605)

[a]Includes only those seven specialties that are each practiced as the primary specialty by at least 25 lawyers (approximately 5 percent) of the sample.

[b]Although listed in the same order of aggregate importance as in table 1, only those 12 skills that vary significantly in importance to the practice of different substantive specialties are included here. The skills that are evaluated differently in various fields do not cluster in terms of aggregate importance; they are distributed throughout the importance listing from a fourth to a twenty-first ranking.

[c]The groupings indicate significant ($p \leq 0.05$) difference between the mean responses of lawyers concentrating in different legal specialties. Those specialties not mentioned for a particular skill are those that are not significantly different in substance from the specialties in one or the others, but not all, of the groupings listed. This does not necessarily mean that the excluded specialties are related to each other with respect to skill importance. The Student-Newman-Keuls procedure was employed (see chapter 3, table 3.18, note *a* for an explanation of this procedure).

[d]Specialties are listed from low (very important) to high (not very important) in the order of the mean importance of each skill.

[e]Mean importance of skill for those specializing in each area based on a 5-point scale rating. A mean of 1.0 (low) would indicate that all practitioners who spend the predominant amount of their time in each specialty consider that skill extremely important to their practice; a mean of 5.0 would indicate that every practitioner considers it not at all important.

76. The prestige of specialties was derived from Laumann's and Heinz's study, *Specialization and Prestige in the Legal Profession*, ABF RESEARCH J. 155 (1977). Attorneys were asked to rank the prestige of each specialty on a scale from outstanding to poor.

77. *See* conclusions in § IV. F. *infra*.

of other attorneys had contributed to their acquisition of legal skills. These practicing attorneys attributed many of their skills to their own experiences. Indeed, the four most important skills (fact gathering, capacity to marshall facts and order them so that concepts can be applied, instilling others' confidence in you, and effective oral expression) were heavily attributed to the lawyers' own experiences.[78]

Which skills did these lawyers attribute to their legal educations? Legal theory; substantive law; ability to understand and interpret opinions, regulations, and statutes; and legal research were perceived as the skills most likely to have been learned in law school. And, as Zemans and Rosenblum noted,[79] these fall in the cluster of analytical skills described above. Moreover, they are entirely consistent with student and alumni appraisals in the Stevens' study that "ability to think like a lawyer" was the most important knowledge imparted by law schools. In the Zemans-Rosenblum study, while graduates of national law schools were more likely than graduates of non-national law schools to attribute the learning of analytical skills to law school, this was only a matter of emphasis. Analytical skills were perceived as the essence of legal education by all. Conversely, the skills rated by lawyers as most important to the practice of law were learned outside law school —that is, through the lawyers' own experiences. Law schools were given low marks for the contribution they made to negotiating, drafting legal documents, understanding the viewpoints of others to deal more effectively with them, getting along with other lawyers, letter writing, financial sense, and interviewing. According to this account, interpersonal skills were infrequently learned in law school.[80]

When asked what skills lawyers would expect neophyte attorneys to bring with them from law school, the same five analytical skills that the Chicago lawyers thought they had learned chiefly in law school were identified. And these evaluations of the contribution of law schools to skill acquisition did not differ significantly between the older and more recent graduates in the sample.[81]

To say that certain skills are not learned in law school is not automatically to say that they can or should be learned in law school. When questioned about the contribution that law schools might be able to make to practical skill acquisition, the Chicago attorneys thought several of the interpersonal skills could not be taught successfully in law school. Instilling others' con-

78. Zemans & Rosenblum, *supra* note 7, at Ch. 6, Table 6.4.
79. *Id.* Ch. 6, Table 6.5.
80. *Id.*
81. *Id.*

fidence in you is an example of one of these. Certain skills, which were given little attention in law school, were, however, perceived as capable of being effectively taught in law school. These included fact gathering, effective oral expression, drafting legal documents, and, to a lesser degree, understanding the viewpoints of others, letter writing, interviewing, opinion writing, and accounting skills.[82]

The Chicago lawyers also believed that their law schools had often failed even to make them aware that certain competencies might be important in the practice of law, much less to teach those competencies. Law schools reputedly did rather well in indicating the potential value of the following skills: capacity to marshall facts and order them so that concepts can be applied; effective oral expression; ability to understand and interpret opinions, regulations, and statutes; knowledge of substantive law; legal research; ability to synthesize law; knowledge of theory underlying law; knowledge of procedural law; and writing briefs. With few exceptions these tended to be the skills that law schools also appear to have taught well. On the other hand, the law schools apparently did a rather poor job of indicating the importance of: instilling others' confidence in you, negotiating, getting along with other lawyers, letter writing, financial sense, and interviewing.[83] Zemans and Rosenblum duly concluded: "None of the skills and areas of knowledge which legal education is likely to have presented as valuable to the practice of law fall within the interpersonal cluster of competencies. . . ."[84]

A few caveats seem important here. The first is that just as the views of current students may lack the perspective that comes from experience, the views of practicing attorneys are contingent upon recollections that may not always be reliable. Second, it is possible that the analytical skills that law schools seem to teach rather effectively are so fundamental and so central to the lawyering process that they, and thereby the law schools, are taken for granted. When such skills are not taken for granted, their importance is recognized in statements like the following from a practicing lawyer:

> I think that law school gave me two vital things for the actual practice of law: 1) the knowledge of where to look for the answer, and 2) an ability to define the problem in order to then seek the answer. I don't think that I learned contracts, or torts, or taxation; and the details of these courses, and most of the others in law school, are long gone. What I did learn is a method of thinking and enough basic knowledge to recognize the area of law I'm dealing with, and analyze it factually. In the course of working in the different courses taken, I also developed

82. *Id.* Ch. 6, Table 6.6.
83. *Id.* Ch. 6, Table 6.7.
84. *Id.* Ch. 6.

> a familiarity with the library, with the texts available on the various subjects, and a method of researching that has served me well. I can think on my feet, analyze situations rapidly and search out the answer quickly. Somehow, without being aware of it at the time, I was taught these skills in law school, and they are far more important than anything learned in the content of any course.[85]

The above seems to represent a considerable success for legal education, but, of course, such an evaluation does not necessarily imply that law schools can do no more. Yet it may be important, in considering the views of practicing attorneys, to remember that they may, on occasion, recall the vivid experiences that pointed out the absence of certain skills better than they remember the strengths. Certain skills may rise to the top of a list of importance merely because they were so obviously lacking.

Considerations like those above may also serve to illustrate the importance of comparing results from a number of times and audiences. Comparing the views of current students with former ones, of one school with another, of one generation of graduates with another, serves to correct and strengthen the inferences we eventually draw. For example, Zemans' and Rosenblum's finding that evaluations of law school curricula do not vary significantly between older and recent graduates is some validation that the perceived shortcomings of legal education are persistent phenomena.

Nonetheless, we must admit the certainty that there have been many developments in law schools since the experiences on which these data were based were had. We must also admit the possibility that certain law schools may have taken effective corrective action. Future evaluative research may shed light on the efficacy of the steps taken by law schools.

Nonetheless, other surveys of law graduates have produced results that are by and large consistent with the Zemans-Rosenblum findings. These are reviewed in the introduction to an excellent article published in 1978 by Leonard Baird, a psychologist with the Educational Testing Service.[86] As Baird noted, lawyers in other studies have expressed the following desires:[87]

> For more practical experience and contacts with courts during law school (Illinois bar, 1968)
>
> For more practical training in law school (Harvard alumni, 1969, Stanford alumni, 1972)

85. Baird, *A Survey of the Relevance of Legal Training to Law School Graduates*, 29 J. LEGAL ED. 264 (1978).

86. Baird's study was one of several sponsored by the Law School Admissions Council.

87. Baird, *supra* note 85, at 265–67. Note also that the recent study of the Springfield, Massachusetts, bar by Thomas J. Reed, Training the American Aristocracy, unpublished manuscript (1980), contains findings consistent with those reported by Baird.

For more practical courses: trial practice, general practice, clinical courses, procedure and evidence, and legal writing and advocacy (Wisconsin alumni, classes of '54, '59, '64, '69 and '72)

Important lawyerly skills: dealing with facts, ability to negotiate, legal planning, advocacy, legal writing (Toledo graduates, 1972)

Skills essential to the practice of law: analyzing cases, legal research, counseling and interviewing (California lawyers, 1973)

For increased emphasis on: trial practice, business planning, legal writing and advocacy, and real property (Michigan class of 1969)

Importance of various skills and characteristics: statutory law, understanding human behavior, organizing facts, self-confidence, thinking quickly on one's feet, persistence, legal research and sense of humor (Kentucky bar, 1974)

Baird's own study was based on a sample taken in 1975 from six schools from the classes of 1955, 1965, and 1970. His results were strikingly similar to those of Zemans and Rosenblum. When asked what skills and knowledge are most useful, his respondents emphasized general skills, rather than particular legal knowledge (except for citing the importance of knowledge of statutory law). Several of the general skills (effective oral communication, writing ability, negotiating, and counseling) were not contingent upon legal professional status. These were considered important skills by lawyers at all stages of their careers, and regardless of their academic success in law school.[88]

Baird asked the lawyers in his sample to identify their principal areas of specialization and to describe the contribution of law school to their training in this area. Four frequent areas of specialization thus identified were family law, personal injury law for the plaintiff and for the defendant, and real estate. Baird found that, "at least a third of those working in the area said that their law school training was not useful or that they had no training in the area."[89] Another often-mentioned area of inadequate training was trial work.

His findings concerning knowledge and skills that are important to the practice of law and the law schools' contribution to those skills almost precisely parallel those of Zemans and Rosenblum:

> Six skills were described as important while the law schools' role in developing the skills was often described as non-existent or as not helpful. Two of the six skills involved work with clients—counseling clients and

88. *Id.* at 292.
89. *Id.* at 293.

interviewing clients—and two related to office practice—directing the work of others and organizing the flow of work. The other two are interviewing witnesses and negotiating.[90]

In a companion Educational Testing Service study by Ramon Powell, a sample of 502 attorneys who were solo practitioners or who practiced in firms of eight or fewer[91] were asked to appraise the qualities of a competent lawyer. The results were consistent with what we have seen, with a few nuances associated with small firm or solo practice. The skills that were assessed as being especially important were those associated with solving clients' problems: getting facts, conducting thorough legal research, pulling the factual and legal issues together, finding practical solutions to problems, and counseling clients on courses of action. There is certainly nothing surprising here. The only skill on the list that seemed relatively unimportant to the respondents was the ability to gain knowledge of a new field by quick study.[92]

When asked to assess the difficulty of dealing with problems in their own practice, the attorneys tended to stress the problems of finding time for legal research and factual investigation and of managing time. Time may be a special problem for solo practitioners and for lawyers in small firms, there presumably being fewer or no young associates or support staff.[93] The respondents also saw the deficiencies of other attorneys in much the same way. Inadequate preparation by other attorneys heads the list of perceived deficiencies, followed by poor communications with clients and by "overcommitment in terms of obligations undertaken relative to results obtained."[94]

Whatever may be the problems of reliability or validity in studying legal education through attitudinal data from law students and lawyers, it is nonetheless the case that all the results tend to run inescapably in the same direction. Suggestions that law schools could do more or that they should add skills to those already taught in law school do not necessarily imply a rejection of what law schools are already thought to do rather well. Lester Mazor's ABF project on the history and contemporary review of materials used in the study of law, at the time of this writing available only in manuscript, will shed much light on law school curricula and pedagogy, for the structure and content of teaching materials reveal much about fundamental perspectives on law and on our system of justice. Mazor reviews the rise of

90. *Id.* at 293.
91. Powell, What Is a Competent Lawyer?, unpublished manuscript (1977).
92. *Id.* at Table 3.
93. *Id.* at Table 4.
94. *Id.* at Table 5. The order in the text is based on the combination of the categories "extremely important" and "highly important."

the casebook to the place of orthodoxy, notes that casebooks (or "cases and materials") are still the only sort of teaching material available to law professors in a number of subjects, and concludes that a fundamental transformation, equivalent to that effected by Langdell and his followers, is not yet clearly in prospect.

In any event, less than a third of the Zemans-Rosenblum respondents would "eliminate or drastically shorten" any area of the extant curricula.[95] At the most, they suggest that a few courses be made elective rather than required. Thus Zemans and Rosenblum conclude that "law school graduates do not want less from their formal legal education, and in many instances they want more."[96] Very few think that the law school curriculum should be shortened to two years. Instead, there were only three competencies to which more than 75 percent of the graduates agreed the law schools had given sufficient attention (knowledge of substantive law; knowledge of theory underlying law; and ability to understand and interpret opinions, regulations, and statutes).

It is commonplace that certain orientations have been stressed and certain subjects minimized in traditional law school curricula. A notable example is the overwhelming orientation toward appellate case materials and the consequent de-emphasis of statutory material. Bernard Lammers' ABF study of the teaching of legislative process and drafting in American law schools sustains the objection that appellate cases continue to be overemphasized. Lammers makes a strong plea for the better teaching of legislative process and legal drafting in American law schools.[97]

Findings from Zemans and Rosenblum and from other surveys about the perceived deficiencies of law school curricula and programmatic suggestions like those contained in Lammers' report may pose some intractable difficulties for law schools. While keeping a three-year curriculum, law schools are supposed to increase the attention they give to a number of competencies which they already attempt to teach, yet they are also supposed to devote attention to competencies they are perceived largely to have ignored. Presumably, law schools might do this by increasing the electives available to students, yet even that poses some considerable difficulties. Lawyers do not support substantial changes or reductions in the core curriculum taught in the first year, so if their advice is followed, electives would have to come chiefly in the second and third years.

95. Zemans & Rosenblum, *supra* note 7, Ch. 6.
96. *Id.*
97. LAMMERS, LEGISLATIVE PROCESS AND DRAFTING IN U.S. LAW SCHOOLS (1977).

Some portion of those years may ordinarily be devoted to preparation for bar examination subjects, so the total elective hours available within the curriculum are fewer than those evident on catalog inspection.

Moreover, many attorneys perceive that they did not learn in law school which particular competencies would eventually be important in the practice of law, so informed election may be difficult. Most of the interpersonal skills reviewed above seem to be important for a large portion of the bar and thus presumably should be taken by most law students. Other skills become relevant in the course of developing a particular sort of practice. One thing the law schools might do is to offer, through counseling or an orienting set of lectures, information about the skills that seem to be important for particular areas of specialization. Elective tracks could then be offered to those few students who wish to pursue a course of study directed toward a particular specialization. Yet most students would be unwise to specialize in law school, and it appears that even given such a program the law school curriculum will be overburdened if most of the suggestions of practicing attorneys are followed.

Some may seek a partial answer in educational technology. Whether the purpose of such technology is to increase the "productivity" of the instructor by not requiring his/her presence during certain sessions or simply to improve the quality of instruction, it is not clear that computer-aided instruction, videotape recorders or other innovations will allow law schools to accomplish more during the three years.

Michael Botein reviewed the uses of the videotape recorder (VTR) in legal education, and he found that VTR use to date has been chiefly associated with clinical instruction—with skills training, rather than with conceptual courses. While VTR use may help considerably with the practical skills training that many lawyers and students would like to see accentuated in the law school curriculum, it is not likely that it will free up time in the curriculum. Botein expressed some caution as to VTR use; clearly it is not a panacea.[98] Equally Park and Burris found that computer assisted instruction (CAI) is still in gestation in legal education, and it remains to be seen whether it will prove to be broadly effective.[99] Other technological applications have no doubt already proved their utility, although not primarily as instructional devices. Computerized legal research has already proven to be a practical and time-saving tool, and it seems certain that its full place is yet in the future. In another application James Sprowl has written of the ABF

98. BOTEIN, VIDEOTAPE IN LEGAL EDUCATION (1979).

99. Park & Burris, *Computer-Aided Instruction in Law: Theories, Techniques, and Trepidations*, 1978 ABF RESEARCH J. 1.

investigation into the feasibility of a word processing system that would substantially automate complex legal drafting tasks. This is likely to be another area of substantial development, especially in large practice settings.[100]

Another answer to the pressures on law school curricula and instruction would be to examine the list of relevant competencies to see which of those generally thought to be important to the bar, could be made a part of a suggested undergraduate prelaw curriculum and which practical skills might best be pursued through "bridging courses," through postgraduate studies, or through continuing legal education (as the need for particular skills arises in the course of practice). We will return to this theme when we consider below the transition from law school to law practice[101] and eventually we will deal with it in our recommendations. Zemans and Rosenblum explore at some length the learning that takes place in the course of practice, especially in law firms, a subject we will examine below.[102]

5. How Well Do Law Schools Teach Professional Responsibility?

Two subjects, professional responsibility and trial advocacy, have received special attention in recent research. While the evaluations of law school curricula reviewed above may have some implications for both of these subjects, here we can see the advantage of concentrated attention and analysis.

The American Bar Association's standards for law school accreditation provide that law schools shall offer and require all candidates for a professional degree to provide instruction in the duties and responsibilities of the legal profession.[103] The question here is how effective are such courses? An ABF study by Pipkin seeks to answer that question.

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100. James A. Sprowl, *Automating the Legal Reasoning Process: A Computer That Uses Regulations and Statutes to Draft Legal Documents*, 1979 ABF RESEARCH J. 9.

101. *See* § IV. D. *infra*.

102. Zemans & Rosenblum, *supra* note 7, Ch. 6. *See* § IV. D. *infra*.

103. Proposed Amendment of Standard 302(a)

At its August meeting, the Council of the Section declared its intention to adopt the following amendments to Standard 302(a):

302(a) The law school shall:

(i) *offer to all students* instructions in those subjects generally regarded as the core of the law school curriculum;

(ii) *offer to all students at least one rigorous writing experience;*

(iii) *offer* training in professional skills, *including trial and appellate advocacy, counseling, negotiation and drafting; and*

(iv) *require of* all candidates for *the first* professional degree, instruction in the duties and responsibilities of the legal profession. Such

Pipkin's analysis of law school instruction in professional responsibility is a remarkable piece of work. His analysis is complex and closely reasoned and well deserves a reading in its original form.[104] Indeed, a short summary of his argument is a somewhat perilous venture. His data were collected in 1975–76 as part of his work on law student activity patterns; they represent over 1,300 students from seven schools.

Pipkin hypothesized the existence of a manifest and a latent law school curriculum. The manifest curriculum is intended and explicit, consisting of such criteria as: (1) whether a course is offered in the first, second, or third year; (2) whether a course is required or elective; (3) the credit weight assigned to a course; and (4) the priority for law school courses over courses from other schools through limits imposed on the number of non-law school courses a student may take.

The latent curriculum is relatively unplanned and inexplicit. It is derived from cues, advice, feedback, and from the content of instruction. These together produce a latent hierarchy defined by three sets of norms—those involving intellectual tasks, those involving pedagogical methods, and those involving teaching quality.

Norms relating to intellectual tasks value intellectual work over emotive or aesthetic or ethical reaction and evaluation. Certain work is regarded as more intellectually demanding than others, much as certain people are regarded as more intellectually able than others. Intellectual tasks thus are hypothesized to head a hierarchy of work and ability.

Pedagogical norms rank classes in a hierarchy according to three common methods of law school instruction: Socratic, lecture, and discussion. In this hierarchy analytical skills are most highly valued (Socratic), information transfer and recall (lecture) somewhat less, and sensitivity (discussion) least of all. The association of the Socratic method with analytical skills ensures

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required instruction need not be limited to any pedagogical method as long as the history, goals, structure and responsibilities of the legal profession and its members, including the ABA Code of Professional Responsibility, are all covered. Each law school is encouraged to involve members of the bench and bar in such instruction.

In August, 1978, Section Chairman Samuel D. Thurman appointed a Section Task Force on Lawyer Competency: The Role of the Law Schools. A report of this Task Force was published in August, 1979, and distributed to university administrators, law school deans, law faculties, state and local bar associations and other interested persons for study and consideration.

104. Pipkin, *supra* note 20.

that courses taught by that method will have the highest position in the hierarchy.[105]

Courses that are well taught will be valued over those less well taught, and Pipkin also argues that courses are ranked according to their professional relevance but that the effect of that ranking is likely to be obscured by the fact that students often lack standards for judging relevancy, by the fact that other norms are more likely to be more coherent and better enforced, and by the variety of student career objectives that diminish the relevancy of any single course.

With such hypotheses, Pipkin undertook the determination of where courses in professional responsibility fit into the latent curriculum. He found that such courses have a low status in the latent hierarchy; his conclusion is well summarized in the following:

> Courses in professional responsibility, to a statistically significant degree, were perceived by students as requiring less time, as substantially easier, as less well taught, and as a less valuable use of class time.[106]

According to Pipkin, courses in professional responsibility were also much more likely to be taught by the discussion method than by the Socratic method or by lecture, a finding that becomes more significant as his analysis progresses.

Both the Socratic method and the discussion method are significantly related to the perceived challenge of a course, but the direction of association is opposite; course difficulty and the Socratic method are positively associated, while course difficulty is negatively associated with discussion classes. The pedagogical approach employed is critical in the evaluation of a subject matter's intellectual challenge, regardless of the student's year in school.[107]

The above may suggest the simple solution is to teach professional responsibility by the Socratic method, but other factors impede that solution. Pipkin argues that the choice of teaching method is influenced by substantive course content. Thus "areas of instruction covering well-elaborated, technically sophisticated legal doctrine are likely to be taught by the Socratic method or by lecture."[108] And he suggested that "[c]ourses on professional responsibility, because of the underdeveloped nature of legal doctrine on the subject, the substantial inclusion of nondoctrinal materials and a diffused

105. *See* Pipkin, Student Responses to the Law School Curricula, unpublished ABF manuscript (1977).
106. Pipkin, *supra* note 20, at 257–58.
107. *Id.* at 260.
108. *Id.* at 262.

focus on personal ethical sensitivity fall into the latter group" (courses taught by discussion). In contrast, courses in taxation are ranked as intellectually difficult, require more time, are perceived to be better taught, and are taught chiefly by the Socratic method. In summary:

> [t]he latent curriculum appears to be defined by the following pattern of normative impact: subject matters, largely based on technical and legal complexity and doctrinal integration, direct the form of classroom pedagogy; pedagogy determines the degree of intellectual tasks; and intellectual tasks assign law school learning priorities for each instructional area.[109]

The net effect of this sequence is that courses in professional responsibility have low status in the law school learning hierarchy, a result which may suggest to law students that professional ethics are peripheral to the lawyer's professional role.[110]

It is also interesting to note how course difficulty is defined by the criteria that produce the latent curriculum. Difficulty is associated with abstract legal concepts, especially as those are linked together in a complex conceptual framework as, for example, in the law of taxation. But complexity is disassociated with the extraordinarily complex vagaries of human behavior. Family law, for example, is regarded as simple conceptually and therefore deserving a low ranking in the latent curriculum. That ranking fails to take into account how incredibly difficult it may be to give timely and appropriate advice to a client who is in the throes of marital dissolution. Apparently the simple legal issues and the complex personal issues are kept distinct in evaluating the complexity of course subject matter.

Zemans' and Rosenblum's study of Chicago lawyers offers a different but complementary perspective on the subject of professional responsibility. When offered a variety of sources to assess for their contribution to the resolution of questions of professional responsibility, the Chicago lawyers rated general upbringing as far and away the most important source. Over 60% ranked general upbringing as the most important source, and overall over 80% attributed importance to general upbringing and other apparently related background factors. The contribution of law school on professional responsibility is far behind, with only 11% ranking such courses as the most important source and another 20% ranking it the second most important source. Indeed, after general upbringing, the Chicago lawyers ranked the influence of other lawyers in their office well ahead of the contribution of legal education.[111]

109. *Id.* at 264.
110. *Id.* at 265.
111. Zemans & Rosenblum, *supra* note 7, Ch. 7, Table 7.1.

Of course, peer socialization requires peers who provide some immediacy and intensity of association, and this is reflected in the finding that solo practitioners were much more likely than lawyers in firms to attribute to law school a significant role in providing the information to help resolve questions of professional responsibility. Beyond the solo practitioner, the size of a law firm is associated with the importance of the role of the law school—as firm size increases, the perceived importance of the law school declines.[112] And this result is especially pronounced when lawyers are divided according to the national or nonnational status of their law school. National law school graduates practicing in large firms attributed the least significance to law school, while nonnational graduates who are solo practitioners perceived law schools to be of the greatest importance.[113]

When law schools are evaluated on their own, rather than relative to other sources of influence, their contribution is still weak—about 42% of the practicing attorneys gave their law school training some credit for helping to resolve questions of professional responsibility, despite the fact that 80% of the lawyers had had courses on professional responsibility in law school. And once again, national law schools receive less credit than nonnational schools. About 20% of national law school graduates ranked their law school training as important, while about 36% of nonnational law school graduates thought their schools had made an important contribution. As Zemans and Rosenblum noted, there is considerable irony in this outcome since national law schools take pride in their professional and theoretical orientations, which they distinguish from a trade school, black-letter law mentality. Yet it is the nonnational schools that are more likely to have an important role in educating lawyers for professional responsibility. And this result is even more pronounced when the particular law schools frequently attended by Chicago lawyers are listed separately—Harvard, Michigan and Chicago have the least perceived importance, while John Marshall, IIT-Chicago Kent, and Loyola have the most.[114] Pipkin's and Zemans' and Rosenblum's studies complement one another and together provide a rather gloomy image of law school courses on professional responsibility.[115] Are there solutions?

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112. *Id.* Ch. 7, Table 7.3.
113. *Id.* Ch. 7, Table 7.4.
114. *Id.* Ch. 7, Table 7.7.
115. Since 1973, Standard 302 of the American Bar Association has required that accredited law schools offer "instruction in the duties and responsibilities of the legal profession" and to require such a course of all degree candidates. None of the studies reviewed here, because of the years during which relevant data were collected, were appropriate for evaluating the impact of Standard 302.

Pipkin reviews three different perspectives on socialization.[116] Those scholars who perceive a profound impact for childhood socialization argue that ethical training for post-graduates comes much too late to be of much import. In this view, value systems formed early in life are likely to have an enduring impact. This seems consistent with the Chicago lawyers' attribution of importance to general upbringing reported in the Zemans-Rosenblum study.

Another perspective on socialization focuses on situational factors. This perspective holds that it is the dynamics of actual situations, each containing competing pressures and expectations, that will have the most profound influences on actual behavior. This view seems consistent with the importance attributed to views of lawyers with whom one works.

A third perspective holds that moral reasoning can be learned but that the manner in which it is learned is crucial to the efficacy of any particular program. In this view, passive learning, as in lectures or moral preachments, will only serve to support a relatively low level of moral responsibility—described as a "law and order" state—which emphasizes duty and rule obedience. A higher stage of development, one contingent upon the application of abstract ethical principles, requires a different method. As Pipkin puts it:

> Stimulation to the higher levels of moral reasoning occurs when persons actively participate in group processes involving ethical questions and personally engage in the resolution of role conflicts. Proponents of clinical legal education have argued that these are among the kinds of educational benefits distinguishing clinics from the classroom.[117]

In a somewhat similar vein, Zemans and Rosenblum, following Lon Fuller, distinguish between a *morality of duty*,[118] which is rule-oriented and which emphasizes the avoidance of rule violations, and a *morality of aspiration*, which emphasizes striving toward the fulfillment of humane values.[119] Despite the relatively low value assigned to law school courses on professional responsibility, the Chicago attorneys studied by Zemans and Rosenblum nonetheless overwhelmingly supported law school teaching of professional responsibility. Some of the respondents were concerned chiefly with teaching directed at simple rule compliance, but others seemed to go beyond that toward a morality of aspiration. Over 60% of the respondents

116. Pipkin, *supra* note 20, at 265–72.

117. *Id.* at 272. *See generally id.* at 266–73.

118. To speak of a morality of duty, of course, does not disparage the importance of rule compliance. Indeed, the committee wishes to stress the importance of law students learning the rules governing professional conduct.

119. Zemans & Rosenblum, *supra* note 7, Ch. 7.

favored substantially broadened instruction. It was especially among lawyers who thought that general upbringing had been important in influencing their own outlook that support for expanded teaching was found—teaching that would extend beyond the Code of Professional Responsibility into general ethical considerations.[120] Behaviors like good communication with clients, timeliness, attention to deadlines, adequate preparation,[121] and the setting and disclosure of fees, which emphasize responsibility to clients, would be part of such considerations, but Zemans and Rosenblum also found support for an approach to professional responsibility that would include considerations about the role of the law and the lawyer in society. Exploring the circumstances under which lawyers are subject to a special responsibility to speak out and take stands on public issues would be one example of such an approach. Again, somewhat surprisingly, graduates of nonnational law schools were more likely to support a broadened consideration of professional responsibility. Graduates of national law schools tended to prefer a more narrow and technical version of professional responsibility.[122]

Pipkin and Zemans and Rosenblum discuss clinical teaching as a way of enhancing instruction in professional responsibility, and Zemans and Rosenblum point out the difficulties in providing clinical experiences in the variety of fields students may eventually meet in practice, not to mention the problems of seeing that all students are sufficiently exposed to real clients in clinical settings. Zemans and Rosenblum speak also of the pervasive approach to the teaching of professional responsibility, recognizing that the "cognitive process of evaluation" is ubiquitous in the practice of law and should also be in legal education, yet Pipkin argues that the pervasive approach might be subject to the same depreciation of issues of professional responsibility that occurs when a specialized course is offered.[123]

120. For example, as we move from the prohibition of professional advertising to a new era of lawyers' advertisements, it will no doubt be necessary to work out a code of fair and acceptable advertising practices.

121. Maddi, *Trial Advocacy Competence: The Judicial Perspective*, 1978 ABF RESEARCH J. 105, 124. Judges most often mentioned preparation as a factor in determining competence.

122. Zemans & Rosenblum, *supra* note 7, Ch. 7.

123. Pipkin, *supra* note 20, at 274–75. *See* especially the following anecdote:

> I remember last year Professor Curtis Berger walked in one day and said, "This is an ethical problem; how do you deal with it?" And half of the class was appalled at the waste of an entire class hour, and they told him so! So we had a make-up class as a result. Because we were talking about something that pertained to the lawyer's role in society, the class literally sat there and said, "You are wasting my time; I don't want to learn this. I want to learn concrete law." And I think that Professor Berger is the only one in any of my classes who has even questioned the fact that there was another side to law besides black letters. *Id.* at 275 n.55.

On the whole we are left with the feeling that the problems of teaching professional responsibility are quite complex, and that reaction may be a useful counterbalance to the tradition of "solving" a problem simply by creating and requiring another law school course. In many ways courses are mounted to meet perceived problems in much the same way that the federal government has been charged with "throwing money" at a problem when no tested solutions are apparent. On the other hand, we note that since the ABA accreditation standards were revised in 1973, there have been efforts in law schools to improve education in professional responsibility. A period of increased experimentation, followed by rigorous evaluations of results is in order, and the admonitions that can be inferred, especially from Pipkin's article, should help guide appropriate experimentation. Eventually, another study like Pipkin's should reevaluate courses in professional responsibility.

It may also be appropriate to consider education for professional responsibility in settings outside law school. Obviously much learning occurs among peers in law firms, but while that may on the whole be desirable, it is impossible to know in advance just what is being learned there. At the undergraduate level, however, purpose and planning is possible. Ethical consideration at that level may have at least two virtues. First, the courses would not be subject to the pecking order of the latent hierarchy that Pipkin reveals, but rather might stand or fall on their own merits. Second, undergraduate courses in professional ethics could bring together prospective professionals from a number of fields—medicine, business, social welfare, education, and theology, to name only a few. The "cross-pollination" that would occur might heighten the awareness of prospective lawyers of the ways others see the legal profession. Equally, prospective lawyers might learn that there are alternative value systems to those dominant in the legal profession.[124] Having sensitized undergraduates to issues of professional responsibility thus broadly defined, these courses might have some impact on what eventually occurs in law schools.

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124. Note especially developments like the Program on Applied and Professional Ethics at the Institute of Society, Ethics and the Life Sciences, The Hastings Center (360 Broadway, Hastings-on-Hudson, New York 10706). The Program's purpose "is to carry out research on applied and professional ethics across a variety of fields and professions, and to serve as a national resource for universities and organizations seeking to strengthen professional ethics and the teaching of ethics." For an example of the work done at the Institute, *see* MICHAEL J. KELLY, LEGAL ETHICS AND LEGAL EDUCATION, Inst. of Society, Ethics and the Life Sciences, The Hastings Center, Hastings-on-Hudson, New York (1980).

6. WHAT IS THE QUALITY OF ADVOCACY IN THE COURTS, AND WHAT MIGHT BE THE RESPONSIBILITIES OF LAW SCHOOLS FOR THE QUALITY OF ADVOCACY?

Questions about the quality of advocacy in American courts have been prominent in professional journals and even in the popular press for several years. While sometimes more heat than light has resulted, there is little doubt that the remarks of Chief Justice Burger have caused the issue to be noticed and eventually studied. The Chief Justice's Sonnett lecture in 1973, followed by Judge Kaufman's leadership and the Clare Committee in the Second Circuit in 1975 and by the Devitt Committee and Cramton Task Force reports in 1979, have been milestones in the midst of persistent controversy. The controversy flared especially when estimates of the number of less than competent advocates encompassed nearly half of the lawyers appearing in courts.

In a certain sense the research about the quality of advocacy seems not to fit properly into our report. Most attention has been given to defining the scope of the problem, and the quality of advocacy is an issue that is much broader than legal education alone. But inevitably attention turns to the responsibility of the law schools for having trained the lawyers who now appear in American courts and to their present role in training prospective advocates.

Clearly, training in trial advocacy is encompassed within the desire for more practical legal education that we have already witnessed. That it usually does not appear on a list of practice-oriented skills is chiefly due to the way survey questions have been framed—the skills that might be included in trial advocacy are listed separately. For example, effective oral expression was near the top of the list of important skills reported by Chicago lawyers in the Zemans-Rosenblum study,[125] and while effective oral communication is likely to be important in many practice settings, it is obviously an ingredient of effective trial advocacy.

Two studies have sought to assess the scope, causes, and consequences of the trial advocacy problem. The Advocacy Committee of the General Practice Section of the American Bar Association in a 1974 resolution set in motion a study by the American Bar Foundation,[126] and the Devitt Committee spawned a major project of the Federal Judicial Center.[127]

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125. Zemans & Rosenblum, *supra* note 7, at Ch. 6, Table 6.1.

126. Maldi, *supra* note 121.

127. A. PARTRIDGE & G. BERMANT, THE QUALITY OF ADVOCACY IN THE FEDERAL COURTS (1978).

Dorothy Maddi's ABF project involved an effort to survey all state and federal judges of trial courts of general jurisdiction, and responses were returned by 26% of such judges. Judges were asked to rate the performances of lawyers who appeared before them in court during the year preceding the survey. The typical judge reported that about 80% of the lawyers who appeared in his court were at least minimally competent. However, that modal response conceals a rather wide distribution of answers: about 13% of the judges rated fewer than half the attorneys who appeared before them as minimally competent, while 17% of the judges reported that 90% or more of the lawyers appearing before them were at least minimally competent.[128]

Perhaps a more precise measure was produced when judges were asked to rate the competence of the attorneys who had appeared before them in their five most recent trials. By that measure 87% of the lawyers were rated as at least minimally competent; conversely 13% were seen as less than minimally competent.[129] The more recent the trial the more likely judges were to rate performances as competent, suggesting that reliance on recall may induce a systematic negative bias in the rankings. Retained counsel were rated over appointed counsel, firm practitioners over sole practitioners, large firm lawyers over small, urban practitioners over rural, and experienced attorneys (thirty-five or over) over the relatively inexperienced.[130]

The judges were also asked to assess the trend in the quality of advocacy in their courts. Little or no change was reported by about half, 32% saw improvement, and only 19% saw a worsening.

The principal factor reported as having contributed to less than competent performance was inadequate preparation, and the majority of the judges ranked trial preparation as the most important factor in determining competence. A problem with that finding is that trial preparation may represent a combination of skills or qualities. If inadequate preparation consists of not knowing how to prepare for a trial, then specific practical training to that end would be an obvious solution. But inadequate preparation could stem from poor time or work-flow management, or could be a problem of professional responsibility, that is, the need to take more seriously the obligations of representation. Some light is shed on the meaning of preparation when other causes of inadequate performance are considered. In Maddi's study, inadequate awareness of the fundamental ethics of the legal profes-

128. Maddi, *supra* note 121, at 116 (Table 3).
129. *Id.* at 118.
130. *Id.* at 120 (Table 6).

sion was not considered to be much of a problem. Whether the obligation to prepare adequately was viewed by judges as part of the fundamental responsibility of the profession is, however, not clear.[131] What is encompassed within the term *adequate preparation* arises again in our review of the Partridge-Bermant study below.

Judges in the Maddi study were asked to rate four programs or policies that might help to improve the quality of trial advocacy. Unfortunately, the responses do not discriminate very much among the options since a majority of judges favored all of them. However, continuing legal education was endorsed by 92% and law school education by 77% of the judges. Certification of specialists and required apprenticeship were also approved, but fewer judges who endorsed these measures saw the quality of advocacy as a serious problem.[132]

The Partridge and Bermant-Federal Judicial Center study employed several research strategies. Each federal district judge was asked to complete a report on each trial before him during a four-week period in the spring of 1977. In the fall of 1977 federal appellate judges were asked to evaluate cases argued during a similar period of time. All federal judges were also asked to complete a questionnaire about the state of advocacy in their courts. Lawyers experienced in federal courts were also asked to complete a questionnaire.

An estimated 8.6% of 1,969 performances in 848 trials in federal district courts were judged inadequate by the presiding judge. Seventeen percent were rated only adequate, 27% good, 26% very good, and 21% first-rate. In the questionnaire responses most federal judges did not believe that there was a serious problem of inadequate trial advocacy in their courts, but about 40% believed that there was.

Partridge and Bermant concluded that "on the whole, the ratings present a very favorable picture of the quality of advocacy in the district courts."[133] However, when judges were divided into those who in the questionnaire reported a serious problem of inadequate advocacy in their courts and those who did not see such a problem, judges perceiving a serious problem rated 12.9% of performances in their courts as inadequate, while judges who saw no serious problem rated only 6.2% of performances inadequate.[134] A separate rating of videotaped performances was used to examine ad-

131. *Id.* at 126 (Table 9).
132. *Id.* at 128–29.
133. PARTRIDGE & BERMANT, *supra* note 127, at 13.
134. *Id.* at 25 (Table 10).

vocacy ratings under controlled conditions. Eighty-nine judges participated in this project, which revealed that judges' ratings of performances were not highly consistent.[135]

The views of the federal trial bar (lawyers who had tried ten or more cases in the federal courts during the past five years) were generally consistent with those of the judges. Highly skilled trial lawyers were, however, more likely than judges or the trial bar generally to perceive a serious problem, and they were more severe in ranking other lawyers' performances.[136] The most serious consequence of inadequate performance was thought by judges and lawyers alike to be that of failing to protect the interests of clients. This consequence caused more concern than did "impairment of the orderly and efficient conduct of court proceedings."[137]

When performance ratings were examined according to the representational roles of the lawyers appearing in court, the differences in performance were not statistically significant. However, when judges were asked in the questionnaire to identify the categories of lawyers with which they identified a serious advocacy problem, private practitioners representing individual clients in civil cases and state and local government lawyers were given especially poor rankings. Lawyers representing corporate clients in civil cases and "public or community defenders" were given positive ratings.[138] Inadequate performance ratings were given more often to solo practitioners, to lawyers thirty years old or younger, and to those who had had no previous federal trial experience.[139]

The questionnaire responses of both judges and lawyers ranked "lack of special skills or knowledge needed for trial work" and "failure to prepare cases to best of ability" as the most frequent causes of inadequate trial performance.[140] When asked where improvement was most needed, both judges and lawyers chose planning and managing litigation, examining witnesses, and general legal knowledge. Within the category "planning and managing cases," the most frequently chosen specifics were "developing a strategy for conducting a case" and "skill in recognizing and reacting to critical issues." Within the category "examining witnesses," the chief concerns were "the use of cross-examination," "the use of objections," and the "use of direct ex-

135. *Id.* at 20-24.
136. *Id.* at 17.
137. *Id.* at 17-18.
138. *Id.* at 33 (Table 16).
139. *Id.* at 36-40.
140. *Id.* at 56-57.

amination." Within the category of general legal knowledge, the perceived need was knowledge of the federal rules of evidence and procedure.[141]

In the ratings of performances, judges were asked to evaluate performance on a number of components of trial performance. Most of these were consistent with the deficiencies identified in the questionnaires. There is one important incongruity, however: the importance assigned to inadequate preparation as a principal cause of deficient performance did not appear clearly in the performance ratings. Items like "mastery of the facts of the case" or "diligence on behalf of the client," which might be viewed as elements of adequate preparation, were relatively infrequently cited in the performance ratings as deficiencies.[142] As before in the Maddi study, inadequate preparation seems to be a pejorative catchall with elusive meaning.

Generally the quality of advocacy in appellate cases received better marks. Only about one-third of the judges perceived a serious problem, and lawyers' responses were much the same. Where inadequate appellate advocacy was perceived, the failure to research and prepare cases adequately was the chief problem mentioned.[143]

A facet of the Partridge-Bermant study that is interesting for our purposes is their consideration of the educational background of lawyers and its relation to trial performance. The results are in certain instances confounding. The schools attended by lawyers who appeared were classified according to prestige.[144] None of the graduates of prestigious schools gave performances that were rated inadequate. Partridge and Bermant noted the hypothesis that prestige schools do not emphasize trial skills as much as other schools, yet to the extent that may have been the case, the omission does not show up in performance ratings. Moreover, those lawyers who reported that they had not had courses in trial advocacy or in professional responsibility were *more likely* to have turned in first-rate performances. These rather peculiar results have no solid explanation. It may be that the good performance of graduates of prestigious schools is due to their general caliber rather than to their law school training, but the exceptional performance of those who had not had courses in professional responsibility or training in trial advocacy may be due to some unidentified factors.

141. *Id.* at 49-51.
142. *Id.* at 52.
143. *Id.* at 61-82.
144. *Id.* at 42. Selection of nine prestigious schools was based on a survey of law school deans, who were asked to name what they regarded as the top five law schools. The nine prestigious schools were those named by 10% or more of the deans. Partridge and Bermant derived this ranking from Blau & Margulies, *The Reputations of American Professional Schools*, CHANGE 42, 44 (Winter 1974-75).

The Devitt Committee, citing the Maddi and the Partridge-Bermant studies, found that "there is a significant problem with the quality of trial advocacy in the federal courts."[145] Once again we encounter a problem with the standard that is to be used in judging such matters. Clearly, the two studies indicate that judges and lawyers believe the problem of inadequate trial advocacy to be much less substantial than Chief Justice Burger's remarks and others have suggested. How much inadequacy is too much? In the instance of an individual litigant, a single inept performance by retained counsel would be too much. The Devitt Committee relied on the finding that about 40% of the respondent judges believed there to be a serious problem. And to the 8.6% of performances rated less than adequate they added the nearly 17% ranked "adequate but no better." For the Devitt Committee that was too much.[146]

The Devitt Committee recommended that the American Bar Association consider amending its law school accreditation standards to require "that all schools provide courses in trial advocacy, including student participation in actual or simulated trials taught by instructors having litigation experience. . . ."[147] The Committee also proposed an experimental federal practice examination, a pilot trial experience requirement and a trial peer review procedure. Finally, the Committee supported the adoption of student practice rules and continuing legal education programs on trial advocacy and federal practice.

The Cramton Task Force Report has also proposed the apparently simple solution that law schools should offer "instruction in litigation skills to all students desiring it." Their discussion of lawyer competence was thoughtful and apt:

> A lawyer's actual performance may fall short of the appropriate standard for any number of reasons unrelated to competence: inattention, laziness, the press of other work, economic factors, or mistake. Indeed, available evidence suggests that reasons such as these, not a lack of capacity to do the proper job (incompetence in the narrow sense), are the cause of most instances of lawyer failure.
>
> The notion of competence must be expanded to include elements of character and professional responsibility in order to comprehend most of the factors necessary to assure an adequate level of professional service.[148]

145. Final Report of the Committee to Consider Standards for Admission to Practice in the Federal Courts to the Judicial Conference of the United States at 1 (1979).

146. *Id.* at 3, 4.

147. *Id.*, summary recommendations.

148. ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 9 (1979).

It is important to note the difference between the Devitt Committee's recommendation "that all schools *provide* courses in trial advocacy" and Recommendation 3 of the Cramton Task Force Report, which proposes that "[l]aw schools should also offer instruction in litigation skills *to all students desiring it*." However laudable the objective of the Cramton report may be, it is appropriate to note that it will be difficult and expensive to implement.[149]

7. WHAT IMPACT DOES LAW SCHOOL HAVE ON STUDENT CAREER GOALS?

There are, of course, many compounding facets to the potential or actual impact of law school on law students. For the past several pages we have examined the interactions between student expectations, law school curricula, and the evaluations of practitioners as they converge to affect our thinking about how legal education might be better designed and accomplished in the future. In an ABF project, James Hedegard has set a task that complements and goes beyond what we have learned about curricula by studying in depth the teaching processes in law school and the effects of those processes on students' career expectations, their attitudes toward the profession and the law, and the development of career-relevant skills and role behaviors. Unfortunately, at the writing of this report most of Hedegard's work is still in gestation. In the next few pages, therefore, we focus on the single aspect of law school impact on students that has received the greatest attention in published research—the effect of law school on career and practice goals—linked usually to a "contest" of sorts between idealism and cynicism for the "hearts and minds" of law students. Hedegard's research is the most recent contribution to that theme.[150]

In a study derived from his data on law student activity patterns, Pipkin joined with two others to focus, in this instance, on the "fate of idealism in law school and on the development of student cynicism about professional training. . . ."[151] Citing psychiatrist/law teacher Andrew Watson, Pipkin, Stokes, and Spangler reviewed the hypothesis that law students' responses to situational pressures in law school may affect their long-term professional

149. Such considerations no doubt contributed to the vote of the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association in August, 1980, to amend Standard 302(a)(iii) of the ABA Standards for Approval of Law Schools to require only that training in "trial and appellate advocacy, counseling, negotiation and drafting be *offered*" (emphasis added).

150. Hedegard, *supra* note 19.

151. Pipkin, Stokes & Spangler, Contingencies in the Development of Cynicism Among Law Students 1 (unpublished paper presented to the Section of Professions of the 1976 Meeting of the American Sociological Association).

outlooks. Thus, the emotional withdrawal Watson describes as a response to classroom tensions, especially in the first year, combines with the pursuit of the law school virtues of being rational and analytical to produce eventually a withdrawal from humanitarian, "people-centered" concerns—so the hypothesis runs.[152]

To test the hypothesis, students from each year of law school from five schools were selected in the fall of 1975, and they were asked to rank their career preferences from a list of eighteen alternatives. The alternatives were divided for coding purposes into three categories—one containing alternatives thought to represent social concerns, one mixed or intermediate, and one containing preferences classed as reflecting little social concern.[153] By comparing student preferences in each of the three years, inferences were possible about the way students' career interests develop while in law school, *i.e.*, whether there is a significant movement away from public service orientations (idealism) toward specializations involving the representation of the rich and powerful (cynicism).

Pipkin, Stokes, and Spangler found movement consistent with their hypothesis. During the three years of law school they found a marked decline in student interest in public service careers, with most of the change occurring between the first and second years.[154] Coupled with this decline in public interest orientations were the increasingly negative appraisals of law

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152. *Id.* at 2.

153. *Id.* at 8, 28 app. Pipkin's public service career scale ranked "idealistic" preferences at zero, mixed preferences at fifty, and traditional business preferences at one hundred. We reproduce here the items he used:

Public Service Career Scale (First Choice Only)

Please indicate which of the following areas of employment best represent your career interests at the present time:

1. Ranked as zero:
   - Criminal Law (Defense)
   - Poverty Law
   - Juvenile Law
   - Public Interest Law
   - Labor Relations

2. Ranked as fifty:
   - Criminal Law (Prosecution)
   - Administrative Law
   - Family Law
   - Teach Law
   - Judiciary
   - Politics

3. Ranked as one hundred:
   - General Practice (Corporate or Wealthy Clients)
   - General Practice (Small Business and Middle Income Individuals)
   - House Counsel for Corporation
   - Probate and Estate
   - International Law
   - Tax Law
   - Business

154. *Id.* at 24 (Table 2).

school, of the curriculum, and of the faculty that we have already seen in another of Pipkin's articles.[155] The authors presented the following interpretation:

> Our findings clearly show a progressive rejection of public service career specialties as students move through law school. A number of reasons extrinsic and intrinsic to the law school can be posited to explain this loss of idealism. As extrinsic reasons, we would cite the greater financial rewards of business-oriented law practice which may seduce debt-weary students' preparation for the inevitable bar examination, with its emphasis on a model of traditional legal practice; and perhaps a pragmatic assessment of the employment market. In our interviews with students, a concern commonly expressed on this point was the difficulty of recruitment and placement in public service jobs. School placement services were described as more effective when working with law firms and corporations than with the less orderly recruitment practices of public interest employers. It was simply much easier to follow traditional tracks than to muster the initiative required to find employment compatible with idealistic values.[156]

The distinction between intrinsic and extrinsic reasons for declining interest in public service jobs is an important one. To the extent that a decline in such orientations in law school *can be documented* (and we will see that when the several studies on the subject are reviewed, the effect is by no means clear), if the decline is due largely to student recognition of market forces, then Watson's views about one of the consequences of the psychological impact of law school would not be demonstrated and the law school would seem not to be the primary "culprit." For example, a study of the supply/demand relationships for public interest law jobs by Howard Erlanger suggests that the number of lawyers graduating from law schools who are willing to do such jobs, even at some economic sacrifice (while yet a small percentage of all law graduates) exceeds the number of positions available.[157]

If, on the other hand, declining commitment to public service careers results from the professional socialization processes in law schools, then thorough study of how and why that happens seems warranted. Pipkin, *et al.*, suggest that the socialization effect of law schools is enhanced to the extent that it approaches the status of a "total institution," that is, one in which the pressures and experiences are frequent and intense, one in which there is some rather clear cumulative direction of influence, and one in which influences of the outside world are largely excluded.

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155. Pipkin, *supra* note 45.
156. Pipkin, Stokes & Spangler, *supra* note 151, at 17.
157. Erlanger, *Young Lawyers and Work in the Public Interest*, 1978 ABF RESEARCH J. 83, 104.

In terms of the *direction* of law school influence, the authors cited the preoccupation of traditional law school curricula with business (a condition which they acknowledge may have changed in the late 60s) and the hierarchy of intellectual values by which courses that are intellectually difficult and challenging have high places in the latent curriculum—a subject we considered above when discussing Pipkin's review of courses in professional responsibility. In terms of the *exclusiveness* of influence, Pipkin, Stokes, and Spangler sought to measure contingencies that would serve to challenge or diffuse the effects of the law school experience. They found that participation in part-time work or in clinical programs while in law school either decreases or eliminates the drift away from public service career preferences, and this was true for both elite and nonelite schools. The single exception was at elite schools where students who did volunteer legal services work experienced an accelerated shift *away* from public service interests.[158] As is the case with most social phenomena, reality is more complex and whimsical than our theories, but it may be that some experiences intended to enhance social concern have the effect of "turning off" certain audiences.

An ABF panel study undertaken by Erlanger and Klegon reaches somewhat different conclusions from those of the Pipkin-Stokes-Spangler study.[159] Erlanger and Klegon studied the class of 1976 at the University of Wisconsin-Madison Law School by a mail questionnaire sent in the summer of 1973, before the beginning of school, and followed by a second questionnaire in the spring of 1975, during the students' second year of study. The chief benefit of a panel design, rather than comparisons between students in different years, is that inferences about change are subject to fewer confounding factors.

Before the beginning of their legal educations, the Wisconsin students were: "politically liberal, moderately oriented toward reform and *pro bono* work, and moderately disinclined to practice corporation law."[160] By the spring of their second year, the students had changed slightly in a conservative direction, but the overall change was slight.[161]

The Wisconsin students were asked to rate twenty-four sorts of legal work according to the degree to which they were thought to require the "special skills of a lawyer." Over time the students' view did not coalesce,

158. Pipkin, Stokes & Spangler, *supra* note 151, at 12-16.

159. Erlanger & Klegon, *Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns*, 13 L. SOC'Y REV. 11 (1979).

160. *Id.* at 20.

161. *Id.* at 21 (Table 2).

indicating there was not effective overall socialization toward a single viewpoint. Students tended to regard litigation roles as most representative of a lawyer's skills. There was some decline in this by the second year, but the "litigator" remained for them the best approximation of the ideal lawyer. The two items receiving the greatest increase over time were "specialization in tax matters in a very large firm" and "estate planning for very large estates." The items decreasing the most in estimation were "handling political trials" (exemplified by William Kunstler) and "investigations of government agencies" (exemplified by Ralph Nader). From informal interviews with students, Erlanger and Klegon found that students appraised types of legal work in accordance with how closely the work corresponds to the traditional lawyer's role. Other than the instances noted, the changes over time were rather modest.[162]

Erlanger and Klegon did find a rather marked increase over time in the number of students who reported that the opportunity to do *pro bono* work would definitely not be important in their job choices. And the percentage of time they expected to devote to *pro bono* work also declined, even though their estimates remained relatively high compared to the participating bar.[163]

Finally, Erlanger and Klegon reported on students' expectations for their job settings five years after graduation. Open-ended questions revealed that the students tended over time to shift away from social reform or activist jobs, yet more than a third remained interested in such work. In choosing from a list of job settings, the students tended to prefer work in a small partnership or small firm and least preferred work in a large firm. This preference became even more pronounced over time.

The authors concluded that only modest attitudinal changes occurred during law school. Generally the changes were toward a more conventional understanding of law practice, but that was not equivalent to desiring large-firm, corporate-oriented practice. They found no evidence that law school had systematically downgraded social concerns or the importance of representing less prestigious clients. They noted that their results may have been idiosyncratic, given the rather strong commitments of a significant group of Wisconsin students to public interest concerns; but they thought it more likely that their data overestimated the influence of law school on orientations toward public interest law, rather than underestimating them. In support of that view they suggested that change may be due as much to matur-

162. *Id.* at 23 (Table 3).
163. *Id.* at 27-28 (Tables 4 & 5).

ation as to law school and that the job market may have the most profound impact of all.[164]

An ABF study by Katz and Denbeaux, like the Erlanger-Klegon study, found relatively little change, or mixed results, between the first and third years of law school.[165] The study, in part, employed another panel design, this one consisting of fifty-two law students attending Seton Hall between 1974 and 1977. Questionnaires were administered at the beginning and end of the first year and in May of the third year. Students were given items that made up a "Trust in People" scale which measured students' feelings about how trustworthy and reliable people are generally. They were also given a "Machiavellianism" scale which measured perceptions about the degree to which people are subject to manipulation in interpersonal relationships. These two scales were intended to provide insight as to whether students became more cynical during the first year of law school. There was little change in students' scores on these scales during the first year, and law students tended to be less cynical than a sample of undergraduates. By the end of the third year, the Seton Hall students had become slightly more Machiavellian, but also very slightly more trustful of others. Neither change was statistically significant, and the results do not seem to sustain the view that law schools produce cynicism.[166]

Katz and Denbeaux also employed two hypothetical situations: the students were asked how in their estimation a judge might behave in one and how they themselves might behave in another. The students' initial responses were notably idealistic, and by the end of their first years they had become less idealistic (some might say more realistic) about the expected behavior of the judge, but they continued to see themselves behaving in a rather noncynical manner. By the end of third year, however, there had been a shift back toward favorable estimation of the judge's behavior. In terms of expectations for their own behavior, by the end of the third year there was a very slight tendency to recognize that their ethical behaviors might make little difference in the hypothetical case, but yet little tendency even then to abandon a high standard of behavior.[167]

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164. *Id.* at 30-32.

165. Katz & Denbeaux, Alteration or Elaboration: Does Law School Instill Cynicism?, unpublished paper presented at the Nat'l Conf. on Teaching Professional Responsibility (1977). *See also:* Katz & Denbeaux, *Trust, Cynicism and Machiavellianism Among First Year Law Students*, 53 J. URB. L. 397 (1976).

166. Katz & Denbeaux, Alteration or Elaboration: Does Law School Instill Cynicism?, unpublished paper presented at the Nat'l Conf. on Teaching Professional Responsibility, (1977) at 17 (Table 7), 7 (Table 1).

167. *Id.* at 8-11, 18-20.

Students were also asked to evaluate the ethics of the legal profession by rating, on a scale from 1 to 10, the ethics of certain legal profession roles and, for contrast, two roles outside the legal profession (doctors and people generally). Law professors and judges began with extraordinarily high evaluations, and while appraisals of law professors declined across the three years, judges remained at a relatively high level. Estimations of people generally were up slightly, while those of lawyers were down slightly.[168]

Finally, the students were asked to rate factors associated with their decisions to become lawyers and to rate the characteristics of a good lawyer. Over the three years students tended to rely less on "reform-oriented" reasons and more on "status-seeking" reasons for becoming lawyers. They also placed less emphasis on the association of "reformist" values with the nature of a "good" lawyer and put more emphasis on "status-seeking" characteristics.[169]

The tendencies we have mentioned in the preceding several paragraphs may be misleading. The changes were slight over the three years even though their directions were sometimes consistent with notions of law school as a contributor to cynicism. Some changes were statistically significant, but overall they were less than profound.

Psychologist James Hedegard's ABF study of first year law students at Brigham Young University's Law School during academic year 1974–75 brings our review of the effects of law school on career goals to a close.[170] Hedegard's study was a comprehensive examination, far exceeding the attention that had been given to any single class in a research project. Of course, the benefits of thoroughness are offset to some degree by problems of representativeness but Hedegard takes some pains to show that BYU law students are not so very different from law students in general, save for their membership in the Mormon church, marital status, and relatively great deference to authority.

By and large Hedegard's findings are negative, that is, the effects of law school often hypothesized and sometimes found in other studies are not found here. Rather, Hedegard concludes: "The general pattern of students' career interests in the law seems to have been rather firmly established in most of the BYU students by the time they entered school."[171] The corollary of rather firmly established preferences upon entry to law school was his finding that: "Nowhere have we found evidence that career interests of the

168. *Id.* at 12, 21.
169. *Id.* at 13 (Tables 4 & 5), 21-22 (Tables 10 & 11).
170. Hedegard, *supra* note 19.
171. *Id.* at 859.

students, as a group, were being uniformly redirected toward a rather limited set of career paths."[172]

An important distinction was drawn between students' views as to how lawyers and the legal system ought to behave on one hand, and their appraisals of actual behavior. Generally the students' views on the "oughts" changed very little. On appraisals of actual behavior, the BYU students entered with highly positive estimations of legal practice and the justice system. Over the first year their views became less positive and subject to more qualifications. But it requires some considerable invention to conclude that the first year at BYU law school instilled cynical views. A more appropriate interpretation is that first year students began with naively positive views of the legal profession and of the justice system but during the year came to perceive greater ambiguity, complexity, and human frailty. That seems to be both appropriate and healthy.[173]

Neither did Hedegard find the profound psychological changes most frequently suggested by Andrew Watson. Rather, he found that students' individual personality qualities were retained or even enhanced in the course of the year. Those personality changes that he did detect could not be linked clearly to the first year law school experience.[174]

The BYU students entered law school favorably disposed toward a number of possible practice settings. Within the private practice area, strong interests were indicated in small and medium-sized firms or partnerships. By the end of the first year preferred work settings remained in roughly the same order, but the initially strong interests in small and medium firm practice were further accentuated. In turn, the practice settings that diminished the most in reported interest were large firm and corporate practice—results hardly countenanced by past assertions that law school turns students toward business-oriented practice.[175]

Perhaps the most important aspect of Hedegard's article is his suggestion that assessing changes in students' preferences by comparing average scores across the years may be misleading:

> Our analyses strongly suggest that average group measures, especially group change measures, frequently represent characteristics of only a minority of the persons composing the group. In terms of changes in general career interest, for example, the mean interest change scores

172. *Id.* at 860.
173. *Id.* at 829-31 (Table 5).
174. *Id.* at 836 (Table 6).
175. *Id.* at 826.

> suggested general if slight drops in career interests which, in the light of our analyses of interest change patterns of individual students and clusters of students ending the year with relatively homogeneous interest patterns, may characterize only a minority of the BYU students.[176]

In other words, comparisons between first, second and third year class average career preferences may be misleading. What seems to be a discernible trend when averages are compared may reflect substantial change of only a minority, coupled with modest changes in the opposite direction on the part of some, and stable orientations of the remainder.

Thus, as Hedegard argues, if critics of legal education are troubled by students' reported values, interests, and career preferences, then attention should be directed toward the law school admission processes, for in his view "law school graduates are generally law school freshmen grown older (with new vested suits and a newly acquired vocabulary)."[177]

The appropriate conclusion seems to be that the several studies we have reviewed do not sustain the view that law school systematically turns students to certain forms of practice or certain preferred classes of clients over others. But the opposite is also true: the studies do not demonstrate conclusively that law schools play no role in socializing students toward certain career preferences. Instead there are tendencies here and there that are suggestive rather than conclusive. Further research is clearly appropriate.

We suspect that if there is systematic law school influence, it results not from intention or design but from rather subtle long-term processes of which the law school experience is only part. The sorts of measures employed in studies to date, except perhaps Hedegard's (the project not yet completed), seem much too crude to capture these long-term processes. Hedegard's suggestion that we look beyond simple comparisons of group averages is an important step in the right direction.

With Erlanger and Klegon we are persuaded that law school socialization operates within the constraints of the market for law graduates, where preferences meet hard realities. We are also persuaded with Pipkin, however, that there may be much to the evaluative criteria which produce the latent law school curriculum, and that subleties like these, while producing no astonishing overnight conversions, may have long term consequences.[178] And we have seen from time to time apparent consequences of the various

176. *Id.* at 868.
177. *Id.* at 865.
178. See the discussion above in connection with note 152.

"pecking orders"[179] that affect law school and the legal profession—and there are more to come.[180]

C. WHAT ARE THE BACKGROUND CHARACTERISTICS OF LAW TEACHERS?

There are a number of questions that can be raised about faculty in law schools; some of the questions involve issues that may have consequences for the content, style, and impact of law school instruction. We know very little about the factors that motivate law graduates to teach in law schools. We have only a little information about law professors' views on the objectives of legal education, that is, little systematic information—the *Journal of Legal Education* contains a plethora of subjective visions of what legal education ought to be about. Charles Kelso's study of part-time legal education, based on questionnaires administered in 1964–65, includes a review of differing orientations toward legal education. He found that professors at high resource schools[181] tended to support a theoretical orientation to law, while professors at lower resource schools tended to support a more practical orientation.[182] We lack systematic information about the structures and processes relating to recruitment and rewards of law faculty that determine, at least in part, the status of the school at which one teaches and about questions of promotion and tenure. We have little solid information about the various roles that law teachers may adopt, or about the factors associated with particular role definitions. In one impressionistic account, Gee and Jackson divided law professors into: (1) *traditional legal scholars*, who tend to view law as an academic discipline and who tend to take their role definitions from that of the university professors; (2) *practitioner-scholars*, who, having gained professional expertise in law practice, have a more practical orientation toward legal education and who are more likely to identify with the practicing bar than are traditional legal scholars; (3) *clinical law teachers*, who, as relative newcomers, are devoted to direct practical training as a primary method for legal education; (4) *interdisciplinarians*, who tend to draw heavily in their teaching and research on fields other than law, and who seek to make legal education more nearly part of the broad tradition of liberal education; and (5) *activists*, who approach law and legal education with a social advocacy orientation.[183] That such types exist, singly

179. Pipkin's discussion of the latent curriculum appears in connection with note 105 *supra*. *See also* the article by Pipkin, Stokes and Spangler at note 151 *supra*.

180. *See* § IV. F. *infra*.

181. KELSO, AALS STUDY OF PART-TIME LEGAL EDUCATION (1972).

182. *Id.*

183. Gee & Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, B.Y.U.L. REV. 695, 933–36 (1977).

or in combination, is probably not much in question; their distribution as to numbers and locations is, however, yet to be demonstrated.

In a somewhat whimsical vein, Thomas Bergin suggested that law professors suffer from schizophrenia, the two sides of their nature being that of the "authentic academic" and that of the "Hessian-trainer." The academic side, he said, is interested in the abolition of required courses, deplores the case method, favors the establishment of research centers, loves the social sciences, likes to teach "far-out" seminars, aches to reform the law, and secretly pines for high federal office. The Hessian-trainer side is involved with preparing students for the practice of law. This side likes to discuss "hard-line" legal topics (such as the intricacies of the Internal Revenue Code), wants the "grim" courses to be required, likes putting students' feet to the fire of the case method, imagines that he was, or could have been, a great trial lawyer, and actually reads advance sheets.[184] Bergin was not entirely whimsical. He pointed out the tension that can exist between competing expectations and roles for law teachers. Research on the roles law teachers adopt and on the causes and consequences of role adoption is clearly in order.

We have the most information on the background characteristics of law teachers resulting primarily from Kelso's study and from a recent American Bar Foundation study conducted by Donna Fossum.

Fossum's study[185] was based on data from the *1975 Directory of Law Teachers*.[186] The *Directory* has the virtue of inclusiveness and the deficiency of providing chiefly predetermined information about law teachers.[187] Law professors are overwhelmingly white and male and they are relatively young (two-thirds are between thirty and fifty)—figures that Fossum suggests are not very different from the legal profession generally.

Fossum focused especially on educational backgrounds. Her central finding is that nearly a third of the full-time law teachers received their J.D. degrees from one of five law schools (Harvard, Yale, Columbia, Michigan, and Chicago), and another 25% received their degrees from an additional fifteen schools.[188] The twenty principal source schools represent the

184. Bergin, *The Law Teacher: A Man Divided against Himself*, 54 VA. L. REV. 637 (1968).

185. Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 1980 ABF RESEARCH J. 501.

186. AALS 1975 Directory of Law Teachers.

187. Her study included 3,850 full-time law teachers.

188. Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, *supra* note 185, at 507 (Table 2).

oldest and most prestigious law schools in the country. One school alone, Harvard, accounts for almost 14% of law faculty teaching in 1975–76.

As might be expected, the law graduates who become law teachers tend to have been quite successful law students. Class standings were not available in the *Directory*, but reported positions on law review staffs and Order of the Coif memberships indicate that close to half of the law teachers had some sort of academic recognition while in law school.

The great majority of full-time[189] law teachers had engaged in some sort of professional activity before entering a tenure track teaching position. The median time spent was five years. About 42% of the teachers had engaged only in the practice of law, 10% had clerked and practiced, and another 6% had clerked alone. Nearly 5% had engaged in graduate law study, and just under 10% had taught in non-tenure track positions.[190]

Fossum estimated law school prestige by using the median LSAT score of a law school's entering class. Her analysis of the relationships between median LSAT and law school characteristics indicated that schools with high median LSAT scores tended to be "older schools with large budgets,

189. Fossum, *supra* note 185, at 503–4: Only full-time teachers holding the rank of dean, associate dean, professor, associate professor, or assistant professor during the 1975-76 school year were included in this study, for only teachers occupying these positions had tenure or were in a position to acquire tenure and consequently make official careers of law teaching. Full-time teachers holding other ranks, such as lecturer, instructor, or fellow, were excluded from the study because they occupied positions that had no potential for tenure and concomitant professional teaching career status. All law librarians, even those of appropriate rank, were excluded from the study because the central focus of their careers was not teaching. The data set can be considered a virtual census of the teachers in the included categories.

190. *Id.* at 510 (Table 4).

TABLE 4

EARLY CAREER EXPERIENCES OF LAW TEACHERS
(POST-J.D. AND PRE-TENURE-TRACK TEACHING EXPERIENCES)

Description	*N*	%
Direct to tenure track teaching	224	5.8
Graduate-level law study only (completed LL.M.)	182	4.7
Clerked for judge only	175	4.5
Taught in non-tenure-track position only	353	9.2
Practiced law only	1,620	42.1
Clerked and taught[a]	58	1.5
Clerked and practiced	329	8.5
Taught[a] and practiced	561	14.6
Clerked, taught,[a] and practiced	76	2.0
Other	272	7.1
Total	3,850	100

[a]Refers to non-tenure-track positions on law school faculties.

higher salaries, and larger libraries; have large total faculties that were disproportionately full professors; have tenure track faculty with more extensive teaching experience; receive many more applications than they accept; and admit students with higher undergraduate grade point averages."[191] Fossum eventually referred to the median LSAT as a measure of a law school's eliteness.[192]

Twenty-five percent of the variance in the eliteness of the school at which law teachers first held tenure track appointments was accounted for by: (1) the status of the school at which the J.D. was obtained; (2) academic honors in law school; (3) possession of the LL.M. degree; and (4) early career experiences. The status of the schools at which law teachers received their J.D. degrees accounted for nearly 75% of the explained variance in the eliteness of the schools at which law teachers held their first tenure track positions. Further, those with law school academic honors tended to attain first positions at more elite schools. Those whose career experiences included a judicial clerkship tended to obtain first positions at more elite schools, while those who went directly into teaching and whose only early career experience was the practice of law tended to obtain first positions at less elite schools. Judicial clerkships were early career experiences dominated by graduates of the most elite schools.[193]

Professors who received their first law degrees at less elite schools tended to pursue the LL.M. to improve their career prospects in law teaching. But obtaining an LL.M. from an elite school has less effect on securing a teaching position at an elite school than does receiving a J.D. from an elite school. The same is true for the S.J.D. degree.[194]

There was little mobility among teachers listed in the *Directory*. About 72% had spent their entire law teaching careers at only one school. Fossum notes, however, that one-third of the teachers in the *Directory* had been teaching fewer than five years.[195]

191. *Id.* at 515.
192. *Id.* at 516.
193. *Id.* at 517 (Table 6).
194. *Id.* at 518, 526-7.
195. *Id.* at 521-22. "The level of mobility in the law teaching profession is remarkably low. Of the law teachers, 72.1 percent (2,777) spent their entire tenure track teaching careers at one law school. It should be noted, however, that one-third of the lawyers were in tenure track teaching less than five years. In any event, for most teachers, the factors affecting the types of law schools where they held their first tenure track positions turned out to be the same factors that affected the progression of their entire teaching careers. For the remainder of the teachers, in order to understand their entire teaching careers I had to look beyond the first tenure track teaching position, for 19.1 percent (735) held tenure track positions at two law schools, 5.7 percent (221) held

The relative eliteness of second tenure track positions was associated with the eliteness of the first teaching position, but the status of the school from which the professor received the J.D. continued to be important. Early career experience that included a judicial clerkship also continued to be important in obtaining elite second appointments. As Fossum summed up:

> In short, law teachers from the more elite law schools of origin who had early career experiences that included judicial clerking and whose first tenure track teaching positions were at the more elite law schools also tended to secure second tenure track positions at the more elite law schools.[196]

Overall, receiving a J.D. degree from one of the top law schools in the nation was the most important credential. It was especially notable that while 59% of all law teachers possessed J.D. degrees from one of the twenty top "producer" schools, almost *ninety percent* of the tenure track faculty at the twenty "producer" schools held the J.D. from those same schools.[197] Were we biologists studying inbreeding, we might predict that successive generations of imbeciles would be produced by such a system. Fossum asked what might be the effect of academic inbreeding here.[198]

We do not mean to suggest that students or faculty at the top twenty or so schools are entirely homogeneous or that their views on legal education are univocal. Yet we have seen already that status differences have discernible effects on legal education and on the legal profession. The differences in emphasis and orientation we have seen between national and nonnational law schools are more likely to be perpetuated in an "inbred" system than in one that is diffuse. It seems clear that the inbreeding here is likely to contribute to a form of legal education that serves large firms and their corporate clients better than it does the lawyers who handle the personal legal problems of average people. At the end of this section we will return to this theme to see whether the various facets of status in legal education and the legal profession can be brought together in terms of general interpretations and conclusions.

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such positions at three law schools, and 3.0 percent (117) held them at four or more law schools. To some extent, the total number of law schools where a teacher held tenure track positions was related to the length of the teacher's tenure track teaching career ($r = .43$, $p \leq .001$), but the tendency of law teachers to spend their entire tenure track teaching career at a single law school was very marked even among those teaching the longest. For example, of those in tenure track teaching more than ten years, 54 percent had held tenure track positions at only one law school. Some of these teachers might have held visiting positions at other law schools from time to time, but the principal institutional affiliation had remained the same throughout their career."

196. *Id.* at 524.

197. *Id.* at 528.

198. *Id.* at 547.

D. QUESTIONS ABOUT TRANSITION FROM LAW SCHOOL TO LAW PRACTICE

Boyer and Cramton suggested that there are a number of directions that research on transition from law school to law practice might take. The first and most obvious is to study how learning continues beyond law school —how and what law graduates learn in the early years of practice.[199] One element of that might be a study of what legal employers do to train young lawyers. A more general set of concerns might focus on the variety of reactions, psychological and ethical, for example, to the transition from law school to law practice. Another direction, they said, might involve exploration of the ways career patterns develop—as to location, work setting, and subject matter specialization.[200]

By and large this Committee's concerns and the research undertaken by the American Bar Foundation have focused directly on law school or on practicing lawyers' perceptions about professional skills and training. Relatively little has been done on transition.[201] The chief completed study among those undertaken by the ABF that addresses questions of transition is Zemans' and Rosenblum's study of the Chicago bar.

1. How Do Young Lawyers Learn on the Job?

According to Zemans and Rosenblum, new graduates who are adrift in a stormy reality of legal practice may often seek relatively safe havens in law firms. Of course, given the vagaries of the job market, many take what they can get. Nonetheless, the opportunity to learn from other lawyers is an important reason for choosing one's first job when a choice exists.

Those whose first legal job was a judicial clerkship or a position in a law firm are likely to have taken educational opportunity into account in choosing those jobs.[202] Moreover, the size of a firm makes a difference. In evaluating the importance of law school training relative to other sorts of training,

199. Dorothy Maddi of the American Bar Foundation is directing an exploratory study of the experiences of those entering the practice of law that focuses on their acquisition of practical lawyering skills and the role of mentors in their development as practicing lawyers. Although the examination of mentor-novice interactions in relation to size of firm, practice setting, and type of work performed is the central focus of this study, it will also investigate the role of other sources for acquiring skills during the early years of practice, particularly in relation to limited mentor-novice opportunities. The anticipated completion date of this study is April, 1982.

200. Boyer & Cramton, *supra* note 2, at 285-88.

201. Lortie, *Laymen to Lawmen: Law School, Careers and Professional Socialization*, 29 HARV. EDUC. REV. 352 (1959). Lortie's paper is a pioneering study, but it is now rather dated, it being based on data collected in the 1950s.

202. Zemans & Rosenblum, *supra* note 7, Ch. 6.

the size of the firm is the most important variable accounting for differences in evaluation. As the size of the firm increases, the perception of the relative importance of law school declines; or the corollary, the smaller the context of practice, the more likely a lawyer is to have relied on his legal education for learning practice competencies.[203]

The importance of learning from other lawyers in one's office, rather than relying solely on law school, can be recognized as problematic when we recall that Zemans and Rosenblum also report that many of the skills viewed as important in the practice of law are, in practitioners' views, neglected in law schools. And another Zemans-Rosenblum finding, but one by no means unique to them, is that access to large firm jobs (and thereby to much on-the-job training) is heavily contingent upon law graduates 'having achieved the indicia of academic success and prestige.[204]

Taking only those whose current jobs are with law firms or the government, Zemans and Rosenblum asked their respondents the source of the learning of selected skills and the knowledge seen to be important in the practice of law. They were asked to rank in importance four sources outside formal legal training: (1) observation/advice from other lawyers in one's own office; (2) observation/advice from other lawyers not in one's own office; (3) one's own repeated experiences; and (4) one's own study. They found that attributing credit for learning to other lawyers in one's own office is most likely in large firms. For example, in the instances of fact-gathering, negotiating, drafting legal documents, and opinion writing, two-thirds or more of those practicing in large firms rank other lawyers in their offices as very important sources of information.[205]

Since skills training in firms is not available to all, legal educators and the profession generally must search for effective means of practical training for all lawyers, and thus we return again to consideration of the need for more practical training in law school. That might be accomplished in a variety of ways, but according to Zemans and Rosenblum, the means can be divided roughly into the pervasive approach, in which relevant practical skills are taught in conjunction with learning substantive law, or through the introduction or emphasis of separate practice-oriented courses, clinical courses being perhaps the most notable example. Whatever blend of practical-theoretical education eventually emerges, pressures for time and emphasis within the three-year curriculum are probably inescapable. Other

203. *Id.* Ch. 6.
204. *Id.* Ch. 4.
205. *Id.* Ch. 6, Table 6.11.

alternatives, either prior to law school or following it, may be fraught with their own difficulties, as Zemans and Rosenblum note.[206]

2. How Do Legal Careers Develop?

Zemans and Rosenblum devote a chapter of their study of Chicago lawyers to the ways practice context and substantive specialization emerge. They found that recent graduates tend to select government and firm jobs and to be underrepresented among solo practitioners in Chicago. That is consistent with the importance graduates place on seeking employment where there are decent opportunities for learning practice skills from other lawyers. Over time, the proportion of lawyers in firms remains relatively constant, while there is movement by some out of government employment and by others into solo practice. When practice context was examined by dividing Chicago lawyers into cohorts (according to the years they had been out of law school) and members of each cohort were asked about their first jobs, Zemans and Rosenblum found that among more recent graduates there was a growing tendency to seek first employment in government or in firms.[207]

The Chicago attorneys were also asked to list the areas in which they did a significant amount of work. Only about 15% devoted their time exclusively to a single area. Most cited no more than three fields, while about 25% cited more than four areas of law. Two-thirds of the Chicago lawyers were concentrated in seven areas of law—in order: corporate, real estate, personal injury, trusts and estates, tax, criminal, and family law. Criminal law and family law were the fields most likely to be practiced to the exclusion of others. However, two-thirds of criminal law specialists were employed by the government, either as prosecutors or public defenders. Lawyers in large firms were most likely to be highly specialized—more than half of them did a significant amount of work in only one or two areas of law. In contrast, about 20% of small firm lawyers and about 15% of solo practitioners worked only in one or two areas of law.[208]

Zemans and Rosenblum concluded that "drift and opportunity" may best describe the process by which specializations develop. Only about

206. *Id.* Ch. 6. Other possibilities include skills acquisition through jobs prior to law school or through part-time law related jobs while in law school, continuing legal education, required clerkships or apprenticeships, or internships based on the medical model. Zemans and Rosenblum point out, however, that post-graduate clerkships or internships are likely to be limited to large practice settings and therefore to the sorts of clients there likely to be represented. And they argue that the positive effects of continuing legal education remain to be systematically demonstrated.

207. *Id.* Ch. 4, Figure 4.2.

208. *Id.* Ch. 4.

17% of their respondents credited law school as influencing their selection of a specialty. Only about 18% cited prelaw degree jobs as contributing to the development of a specialty. And just over 15% cited the opportunity to learn a particular specialty as an important factor in choosing a job. Many of those are no doubt tax lawyers, who, more than others, seem to seek out a particular specialty. Forty-three percent of undergraduate business majors end up in tax law and another 39% of undergraduate business majors concentrate on corporate law.[209]

Zemans and Rosenblum thus found that specialization is most often an "identity developed only after beginning the actual practice of law."[210] Factors like geography and the lack of other job offers may be more important reasons for job selection. And, as we have seen, the opportunity to learn practice skills from other attorneys was an important reason for first job selection for almost 25% of the Chicago lawyers and the most important reason for nearly 14% of them.[211]

Specialization appears to be a consequence of the first job setting, according to Zemans and Rosenblum. Job settings are associated with the nature of clientele, which, in turn, determines the needs of firms and eventually the specializations of attorneys. Zemans and Rosenblum suggest that particular specializations within firms may be circumstantial—the needs of a firm at the time a lawyer begins employment or even the pressure of a single big case in a firm's docket.[212] Yet once a particular specialty is established, it is likely to persist throughout a lawyer's career. Thus recruitment to the first job following graduation is likely to have long-term impact.

Of a subsample of Chicago lawyers who had been out of law school more than three years, about 53% remain in the same organizational context as in their first jobs and almost three-fourths spend the largest share of their time in the same specialty as in their first jobs out of law school. Thus the organizational setting of first jobs is likely to define subsequent careers. Over half of government lawyers began government work upon graduation. More than three-fourths of those practicing in large firms either began practice in large firms or in judicial clerkships.[213]

Solo practitioners are somewhat different, at least those Chicago practitioners in the Zemans-Rosenblum study. Less than a third of solo practi-

209. *Id.*
210. *Id.*
211. *Id.* Ch. 6.
212. *Id.* Ch. 4.
213. *Id.* Ch. 4.

tioners began practice in that setting. Solo practice is thus often a setting into which lawyers move after their first postgraduation positions. This is consistent with the finding that young lawyers often seek an initial practice setting in which they can learn from others. On the other hand, there is little movement from solo practice toward large firms; less than 2% of large firm lawyers began as solo practitioners.[214]

Of the seven largest specialties, the one with the greatest movement is corporate law, a broad specialty covering a number of competencies. Corporate law had the greatest percentage increase in practitioners from first jobs. In terms of exodus, criminal law had a 40% attrition rate from first jobs. Some of this movement was that of government attorneys (prosecutors and public defenders) into private practice. Specialties like tax and patent law were *especially* stable, remembering that three-quarters of the Chicago lawyers reported stable career specialties from first to current jobs.[215]

Stability in practice context and in specialty suggest that the profession and law schools need to pay special attention to initial job recruitment. Students are entitled to know of the probable long-term impact of their first jobs. And to the degree that we are concerned about the equitable delivery of legal services, intervention at this point will prove important. To the extent that various public service practice settings are to be encouraged, initial job experience in such settings may have relatively persistent impact.

3. WHAT ARE THE EFFECTS OF LAW SCHOOL CREDENTIALS ON LEGAL CAREERS?

Since we have seen that initial legal jobs are so important in determining legal careers, the question arises about how first jobs are secured. There is much conventional wisdom on that subject, but only part of it may be consistent with what more rigorous analysis reveals. The Zemans-Rosenblum study is once again our major source.

Zemans and Rosenblum found a statistically significant relationship between law school attended and the organizational setting of legal practice. The percentage of national law school graduates increases from solo, through small and medium firm, to large firm practice. About 73% of the members of large firms (fifty lawyers or more) graduated from national law schools, while only about 22% of solo practitioners did. And this relationship has demonstrable consequences: median income was cor-

214. *Id.* Ch. 4.
215. *Id.* Ch. 4.

related with the practice context as are self-rated mastery of professional skills and professional success.[216]

Graduates of national law schools are also more likely to engage in high prestige specialties than are graduates of other schools. The relationship is most clear for graduates of elite schools. For example, nearly 62% of Harvard graduates in Chicago are engaged in high prestige specialties. The relationship between practice context and prestige of specialty is, however, more complex than one might suspect. Not all high prestige specialties are practiced in large firms. Patent law, for example, is rarely practiced in large firms, yet it is a high prestige specialty. Zemans and Rosenblum suggest that an appropriate interpretation is that while high prestige specialties may be practiced in other than large firm settings, large firms do virtually no low prestige work.[217]

It seems predictable at this point that academic success in law school would have the same effect as the status of law school. Large firm attorneys have higher reported class standings than do lawyers in other practice settings. Class standings are also associated with the prestige of one's specialty, but that is true only for lawyers in large firms; when practice context is controlled, the relationship between class standing and specialty prestige does not hold.[218]

The relationships reviewed in the last several paragraphs have held for single factors or pairs of factors separately examined. When the aggregate impact of social background, law school attended, and class standing on both practice context and prestige of specialization is examined, Zemans and Rosenblum found that the nature of law school attended emerges as the most important factor in determining context of practice and prestige of specialization. The nature of one's law school explains about 56% of the variance in organizational context, father's occupation just over 8%, and class standing about 36%. The law school attended explains nearly 58% of the variance in prestige of specialization, father's occupation about 11%, and class standing nearly 31%. These effects are even more pronounced when the nine law schools most frequently attended by Chicago lawyers are used, rather than a national/non-national dichotomy. By all measures employed by Zemans and Rosenblum, the nature of the law school attended has the most predictive power in determining both career context and prestige of specialty.[219]

216. *Id.* Ch. 5.
217. *Id.*
218. *Id.*
219. *Id.*

Whether students who seek high status legal careers have heard about the appropriate steps for that object even *before* reaching law school, or whether such students learn the appropriate career steps *in* law school (and may be encouraged, by whatever means, to follow them) is, as we have seen, not altogether clear. But we do know that the law school one attends and one's success while there open doors to high prestige first positions. And the first job after law school determines, to a significant degree, what will follow during the course of one's practice.

Zemans and Rosenblum review the conventional wisdom, which is by and large consistent with their findings, that top legal talent from prestigious schools flows into large firms which engage in high prestige specialties, and they conclude that: "With such trends likely to continue, and with the documented stability in legal practice, those interested in broadening the base of service provided by the legal profession need to orient themselves to providing job settings for new lawyers which are likely to provide the intended service,"[220] and "through their influence on job setting law schools affect the making of the legal profession well beyond their direct influence in the schooling process."[221]

E. TO WHAT EXTENT IS THE LEGAL PROFESSION STRATIFIED—AND WITH WHAT CONSEQUENCES?

In a study published in 1977, Laumann and Heinz reported the status differentiation of the legal profession in Chicago. Their study was based on 777 personal interviews with lawyers whose offices were located within the city of Chicago. Their respondents were asked to identify the amount of time they spend on each of a list of thirty legal specialties. Their areas of specialization were then examined in conjunction with a number of other variables.[222] Prestige scores for each specialty were computed by asking a subsample (224) of their respondents to rate the prestige of specialties on a five-point scale from outstanding to poor.

While practice specialties and prestige scores for specialties were based on interviews, the intellectual challenge of each specialty was rated by a panel of law professors and ABF research specialists (on a five-point scale, from very great to very little). The panel of experts also rated each specialty on similar scales for the rapidity of change in substantive law, for the *pro bono* element (from highly profit-oriented to mostly *pro bono*), for the degree to

220. *Id.*
221. *Id.*
222. Laumann & Heinz, *supra* note 76, at 155, 164.

which a specialty had a good or a bad reputation for ethical conduct (e.g., the presence or absence of "sharp practices"), and for the degree to which practitioners of a specialty had freedom of action or were highly constrained by clients or by practice context.

The way the specialties are ranked according to prestige and the way the other variables seem to be associated are remarkably clear for social science research results. At the top of the prestige scale are specialties clearly associated with big business (in order: securities, tax, antitrust for defendants, patents, antitrust for plaintiffs, banking, public utilities, and general corporate). At the bottom of the prestige scale are specialties associated with individuals and to some degree with low income individuals (in order of lowest first): general family (poverty), divorce, landlord-tenant, condemnations, consumer (debtor), and personal injury (plaintiffs).

Specialties at the top of the prestige list tend to have high marks for intellectual challenge and for the rapidity of legal change. They also have low *pro bono* scores, and, in turn, several of the specialties low in the prestige list have high *pro bono* scores. Specialties at the top of the prestige list tend to have rather high ethical conduct scores; some of those toward the bottom have low ethical conduct scores (criminal defense, personal injury (plaintiffs), and divorce). Finally, those specialties at the top of the prestige list tend to have low freedom of action scores, except for antitrust litigation for plaintiffs.[223] It is important to remember, however, that these variables were rated by the panel of experts, and that the correlations are between the prestige of specialties as rated by the Chicago practitioners and the qualities of the practice specialties as judged by the panel of experts.

Laumann and Heinz also examined the relationships between prestige of specialties and various background characteristics of the lawyers who practice in each. Given that we have just reviewed, from the Zemans-Rosenblum study, the effect of law school credentials on legal careers, the Laumann and Heinz results will not be surprising.

Graduates of elite schools (here defined as Chicago, Columbia, Harvard, Michigan, Stanford, and Yale) tend, with one exception, to be gathered especially in three high prestige specialties: securities, antitrust work for defendants, and antitrust work for plaintiffs. Elite school graduates are also found in relatively large numbers in civil liberties work, a specialty slightly below average in prestige. The civil liberties exception may be explained by the fact that to qualify as a "specialist" a respondent had only to report that he

223. *Id.* at 166-67 (Table 1).

spent 25% or more of his time in such work. At one point Laumann and Heinz noted that civil liberties practitioners reported high incomes, indicating that they probably practice in other fields and do civil liberties work *pro bono*. Elite school graduates tended to practice in specialties with high intellectual challenge scores, civil liberties being the only one of the intellectually challenging specialties that is also not rated as highly prestigious.

The percentage of solo practitioners in a specialty is inversely related to prestige, while the percentage of specialists in a field who practice in firms of thirty or more has a strong positive association. Securities, for example, has one of the largest percentages of lawyers from large firms and none of the securities specialists in the Laumann and Heinz study were solo practitioners. Divorce is the lowest prestige specialty, and it has the highest percentage of solo practitioners.

High prestige specialties tended to contain practitioners who described their work as demanding a high degree of professional expertise. General family practitioners, on the other hand, reported frequently that paraprofessionals could be trained to handle most of the tasks involved in their work.[224]

Prestige and income do not have a linear relationship. While the highest incomes tend to be associated with high prestige specialties and the lowest incomes with the least prestigious specialties, there are many shadings of differences in the middle of the list, and there was not a significant correlation between income and prestige for the list as a whole.[225]

In analyzing their findings, Laumann and Heinz came to the following rather provocative conclusions:

> Our results . . . indicate that the most important feature of a legal specialty in accounting for its relative prestige standing is its *pro bono* score. The higher a specialty stands in its reputation for being motivated by altruistic (as opposed to profitable) considerations, the lower it is likely to be in the prestige order.[226]

F. CONCLUSIONS

At a number of places during the course of this review we have noted the apparent effect of prestige and status on legal education and on the legal profession. Obviously, we still have rather few empirical studies of legal education and the legal profession compared to those of other social institutions. Most of the studies we have reviewed have limited data bases. We should especially note that far too much attention has been given to the

224. *Id.* at 189.
225. *Id.* at 190-91.
226. *Id.* at 202.

Chicago bar, however representative it may be. Of course, that attention is understandable given limited resources and the crucial role of the American Bar Foundation in many of the empirical studies we have. Of course, there will be utility in replicating these studies in other times and places and with larger samples, research funding permitting. So let us be cautious in our conclusions. Within the memory of the practitioners who have been surveyed or interviewed, and within the perspectives of the students at various schools that have been studied, we can draw some tentative conclusions about the role of prestige and status in the profession. These conclusions are proper at least for the time (chiefly the last decade) and the places in which the samples were drawn. Whether the conclusions, especially about the content of legal education, are still appropirate for today cannot be solidly demonstrated. Our best judgment is that they are.

We have seen that socio-economic backgrounds, correlating as they are known to with academic achievement, produce a body of law students who tend to be of relatively high socio-economic status. The use of admission criteria like undergraduate GPA and LSAT scores probably contributes to and perpetuates the relatively high socio-economic status of law students. We know that when there are far more applicants for law schools than there are positions, the situation is more likely to be exacerbated.

We know that, while there are likely to be continuing controversies about the appropriate means for ranking law schools, there is a "pecking order" of law schools. By whatever means they are ranked, we can expect a high order of agreement in naming the top ten or twenty law schools in the nation. We know also that the prestige of a law school is one factor students use in selecting law schools. We know that the best qualified students, as measured by GPA and LSAT, tend to congregate in top law schools. We know also that, because of regionalism or localism and because of cost factors, not all the top students go to the top national schools.

We have reason to conclude that the orientations of law schools differ in rough relation to their positions in the prestige "pecking order." Caution is appropriate here. Obviously not every course taught by every professor in the least prestigious law school in the nation is a "black letter law" course geared to the nearest bar examination. Equally, not every course taught by every professor in the top law school in the country is a highly theoretical one that denigrates the mundane practical application of the law. Reality is not that simple, and the data do not support such conclusions. Nonetheless, we can be reasonably sure that at least during the time these studies were conducted, more prestigious law schools tended to have a more theoretical

orientation and a less practical orientation to the study of law than did less prestigious schools. We are somewhat less sure that less prestigious schools offered a solid practical orientation to the practice of law. Lower ranking schools are no doubt limited in what they can do by the resources available to them.

There seems to be solid evidence to support the conclusion that "thinking like a lawyer" is at the core of what most law schools are about. "Thinking like a lawyer" emphasizes intellectual skills, and law schools generally seem to do their best work in teaching skills of analysis and synthesis. Indeed, it is only fair to conclude that law schools do a good job of teaching analytical skills, yet it seems that that emphasis produces the latent curriculum described by Pipkin, with the consequence that certain courses, like professional responsibility, may be devalued.

The research we have reviewed reflects a clear desire for more practical legal education by students and practitioners, the two largest legal education constituencies. We have evidence to conclude that skills like legal drafting, oral and written advocacy, counseling, negotiation, and the like received relatively little emphasis, at least during the legal education of the practitioners and students who were the subjects of the research we have reviewed. We have an impression, but one yet to be confirmed by rigorous research, that some law schools have been adjusting to such findings and working toward repairing such omissions during the past several years. It appears that the careers of law professors, and especially the concentration of the legal education of prospective teachers in a relatively few schools, have contributed to the tendencies in legal education that we have described.

We know that access to legal jobs is associated with the various indicia of success and prestige we have reviewed above. That consequence is, of course, mediated by regionalism and localism, but there are likely to be regional or local professional "pecking orders" that are roughly comparable to that facing a top graduate of a top national school. It seems that the opportunity to learn from others by acquiring jobs in firms or government agencies offers an important, indeed crucial, supplement to the emphasis placed by law schools on theoretical/analytical/synthetic skills. Those law students who, upon graduation, obtain jobs where they can learn from other lawyers are probably decently served by the legal education. Those who do not apparently muddle through—somehow.

We have evidence for concluding that indicia of success and prestige have a profound and apparently enduring impact on the context of practice and on the opportunity to enter particular specialties. We know that certain

specialties are valued over others, only partly due to expected economic returns. The intellectual difficulty of specialties—within the criteria of the legal profession—has much to do with the "pecking order" of specialties. Thus securities work is regarded as intellectually challenging; working with the complex personal problems sometimes involved in the dissolution of a marriage is not.

We know that by applying the criteria of law schools and the legal profession, the "best" students from the "best" schools have the opportunity to choose among a variety of legal careers. We know also that many choose to follow the conventional professional criteria into prestigious practice contexts, and that prestigious specialties eventually follow for many.

We know that many (but not all) of the "least qualified" students from "lesser" law schools end up doing the relatively low prestige work of the profession. We conclude, therefore, that one consequence of the system we have described is the inequitable distribution of legal talent (at least as talent is defined by the profession) among potential clients. Of course, not all students follow this pattern. We should be the first to witness the service of those who "swim against the stream." And we should remember that the vast majority of lawyers end up neither at the prestigious apex nor at the nadir of the legal profession.

We do not yet know the degree to which (or how) law schools contribute to the outcomes we have described. It seems unlikely that the role of the law school in such matters is that of conscious design. It seems much more likely that the subtle but cumulative influences of the various factors we have reviewed produce such outcomes.

We are sure that the questions and issues raised here deserve an ongoing research program. We cannot be certain what can or should be done in connection with the situation we have described, but that is the subject of our recommendations.

V. FINANCIAL RESOURCES FOR STABILITY AND REFORM

A decade ago Bayless Manning, then dean of the Stanford University Law School, pointed out the woeful state of financing for law schools by noting:

> America's law schools have been notably unsuccessful in bringing their unhappy financial plight to the attention of anyone outside an immediate circle of professional legal educators and a few generous and interested lawyers. It has been observed before that lawyers take better care of other people than they do of themselves, and law schools appear to be no exception to that professional trait.[1]

Unfortunately, Dean Manning's assessment of the financial problem confronting legal education is equally applicable as we enter the decade of the eighties. Indeed, the "unhappy financial plight" may have worsened.[2] Any attempts to innovate or change programs within the legal education community, therefore, must be viewed in light of financial realities and the potential for increased resources. In fact, the clear dilemma confronting this Committee and the rest of legal education is whether innovation can, or should, occur until greater financial resources are committed to new programs. Yet, without these same new programs and movement toward reformation, the need for increased financial support cannot be shown—an unsuitable Hobson's choice.

How did this unhappy state of affairs arise? Certainly it is beyond the scope of this Committee's Report to attempt to offer solutions to the financing crisis. As will be noted in our recommendations, more research on the financing aspects of legal education needs to be pursued, particularly now that additional data regarding legal education and the profession are avail-

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1. Manning, *Financial Anemia in Legal Education: Everybody's Business*, 55 A.B.A.J. 1123 (1969).

2. *See generally*, E. Cheit, The New Depression in Higher Education (1971); H. Packer & T. Ehrlich, New Directions in Legal Education (1973); P. Swords & F. Walwer, The Costs and Resources of Legal Education (1974) (hereinafter cited as Costs & Resources); P. Swords & F. Walwer, *Financing Legal Education*, 64 A.B.A.J. 1880–85 (1978) (hereinafter cited as *Financing Legal Education*).

able from which incisive questions regarding costs and resources can be asked. At the same time, the Committee believes that an awareness by the reader of this Report of the "dilemma" is necessary in order better to understand the posture and context of the Committee's recommendations.

A continuing legacy of Christopher Columbus Langdell is the educational model of teaching large classes in a Socratic "dialogue" using as basic materials appellate court cases. This approach, still prevalent in law schools today, has created professional education "on the cheap."[3] Unlike most other graduate programs, it is not unusual for law schools to find themselves with a better than 30:1 student/faculty ratio. Indeed, any law school with a student/faculty ratio of less than 20:1 is in an enviable position.[4] As a result of the continuing existence of such large classes there is, also, little need for expensive classroom teaching equipment or to expand capital facilities.[5] And, because so much professorial effort must be consumed in direct or indirect classroom instruction, there is comparatively little time devoted to research activities in law schools. Without substantial research efforts there is limited pressure placed on law school libraries to expand dramatically certain areas of their collections (although it must be noted that law libraries are an expensive venture even when they are only meeting basic collection needs),

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3. Stevens, *Two Cheers for 1870: The American Law School* in PERSPECTIVES IN AMERICAN HISTORY, 465 (D. Fleming & B. Bailyn eds. 1971). Professor Stevens notes:

> In fact, over the last one hundred years, the inherent conflicts in the purposes of legal education have been heavily accentuated by its remarkable underfunding. Even the leading law schools have faculty-student ratios which are unheard of in any marginally acceptable college and unthinkable in any other graduate or other professional school. This underfunding of legal education is probably attributable to the Langdellian model—for the case method seemed to work as well with two hundred students as it did with twenty. Indeed, Langdell's greatest contribution to legal education is the highly dubious one of convincing all and sundry that law schools were cheap.

Id. at 534-35.

4. The Council of the ABA Section of Legal Education and Admissions to the Bar has become sufficiently concerned about the continuing high student/faculty ratios in most law schools that it has attempted to encourage schools to improve their student/faculty ratios by interpreting Standards 201, 401-405 of the American Bar Association Standards and Rules of Procedure for Approval of American Law Schools to mean that a ratio of 30:1 or more is not "favorable." *See* ABA Consultant Memorandum 7879-11 at 28.

5. Of course, as law schools have increased in size, by design, in order to accommodate student admissions pressures, a need for facility expansion became necessary. But when law schools maintain a stable faculty and student profile, as will probably be the case during the next decade, then the need for facility expansion for pedagogical and program reasons will not be great unless, of course, the recommendations of this Committee and those of the Cramton task force are adopted.

nor is there a demand for high levels of direct research dollars in the law school budget.[6] Underfunding then becomes a self-fulfilling prophecy.

We may be painting with exceptionally broad strokes to lay most of the blame for the present financial malaise in legal education at the door of the large class-high student/faculty ratio tradition, even though the most calloused observer would admit that public school ratios for professional education programs have left little room for responsible creativity within the law school framework. Rather than being a scandal, though, the Langdellian legacy continues to receive much support from within and outside the legal education community. "Just look at the quality of the profession—law school must be doing something right." Or, "Why tinker with a proven product?" These, or like arguments, are continually heard. There may be little question that law schools have done a decent job, given their handicaps; but at the same time traditional approaches should not become sacred objects, particularly when the needs of the profession are changing so dramatically.

Many of these pressures for change and improvement in the structure of legal education programs have already been identified in this Report, and if the recommendations made by this Committee and others are given serious consideration, then the present financing structure of legal education must change, and substantially so. An example of this need for change is found in one recent area of innovation—clinical legal education. Clinical legal education is comparatively expensive because it requires lower than usual student/faculty ratios resulting in an increased instructional staff; greater commitment of resources to equipment, facilities, and secretarial staff; and more dollars for a variety of supporting services.[7] At the moment, given the low funding levels for law schools in general, much clinical innovation has been pursued at the expense of other worthwhile educational programs. This "robbing Peter to pay Paul" syndrome has also resulted in some law schools finally abandoning their clinical efforts and returning to less expensive teaching models. Without debating the merits of clinical legal education programs, it is quite clear from experience with these programs that experimentation is expensive and limited dollars act as an effective deterrent to innovation.

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6. Monies budgeted for research in law schools, when compared with other university units, are distressingly low. Even accounting for substantial expenses incurred in applied research undertaken by some units of the university, the amount of money generally available for research in law schools is extremely modest. *See* PACKER & EHRLICH, *supra* note 2, at 65.

7. Swords, *Including Clinical Legal Education in the Law School Budget* in CLINICAL EDUCATION FOR THE LAW STUDENT 309-355 (1973). *See also* COSTS & RESOURCES and *Financing Legal Education, supra* note 2.

Attempts to innovate in legal education under the guise of traditional funding structures can only mean eventual underfunding and failure of new programs.

We should not lose sight that the anemic financing of legal education not only adversely affects program innovations, but also has a ripple effect on the whole of the qualitative structure of legal education. Without sufficient scholarship and grant money it is becoming more difficult for many schools to attract first quality students as well as students who cannot attend law school without financial aid.[8] Not only is there inter-law school competition for good students but, increasingly, there is competition from other graduate programs such as those in business and engineering. And once students are in law school, the alarming phenomenon of part-time students disguised as full-time students is being uncovered. This is occurring because many students must now work to meet mounting educational costs. It is also becoming increasingly difficult to attract and sustain excellent teachers and scholars. Starting salaries for students directly out of good law schools range as high as $38,000 in some cities.[9] The median base salary for a full-time teacher at an American Bar Association approved law school for the 1979–80 year was $32,387.[10] The storm signals should be readily apparent. When salary disparities become too great between teaching and other professional remuneration, then many will be tempted to leave the teaching profession. There will, in turn, be no guarantee that equally capable people will be attracted to take their places. And equally dangerous is the possibility that there will not be a sufficient diversity among legal educators—those who opt to teach at any price may well be so wedded to "academic" law that law schools may become a refuge for people of one particular dogma. Diversity among faculty is necessary for the continuing intellectual health of any teaching institution, particularly one that is training people for a public profession such as law.

Library and supporting services in law schools are also increasingly affected by the underfunded nature of legal education.[11] In an inflationary

8. *See generally* White, *Law School Enrollment Continues to Level*, 66 A.B.A.J. 724-25 (1980).

9. Ruude, *A Two-Tier Market for Lawyers and M.B.A.'s*, MONEY 81 (May 1980).

10. Memorandum 7980-14 from Dean James P. White, Consultant on Legal Education to the American Bar Association.

11. The nature, and funding needs, of the law library of the future are being addressed by a committee of the ABA Section of Legal Education and Admissions to the Bar, created in the fall of 1980, chaired by Judge Alfred T. Goodwin, United States Court of Appeals for the Ninth Circuit. The ABA Standing Committee on Facilities of the Law Library of Congress also is addressing the question of support services on a national level for state and local law librarians. Both committees are studying the possible establishment of a National Law Library.

economy where book costs increase at twice the inflation rate, the need for ever additional library resources is an acute problem, particularly when the number of absolutely essential books basic to any law library collection is growing at an exponential rate.[12] The new technology in computer-based research and retrieval systems and other innovations is changing the face of libraries, turning them from mere repositories into research and service concerns essential to the educational programs of the institution. More secretarial help, word processing machines, computer terminals, skills training centers, dictating equipment, research assistants, and travel grants are only some of the other needs that law schools must meet. Many are essential even if no change occurs—with modest or increasing attempts at innovation, new funding sources become essential.

The case for increased funding for legal education appears compelling. But from what sources? Again, it is at this point that more information needs to be collected. It is known, of course, that the traditional sources for law school income come from: (1) tuition and fees, (2) appropriations from state legislatures, (3) endowment income and (4) grants and gifts. It is on this resources side of the ledger that the distinction between public and private education becomes crucial. Private educational institutions must support their educational programs from tuition supplemented by other income. Public institutions generally receive a majority of their operating income from state sources with tuition supplementing these public appropriations. The tuition differential between public and private law schools can become substantial. For example, the tuition at the Duke University Law School in Durham, North Carolina for the 1980–81 academic year is $4,740 while the same tuition at North Carolina University in Chapel Hill, North Carolina is $626 for in-state students and $2,336 for out-of-state students. Such differential in tuition will not adversely affect the ability of many of the fine private institutions to attract sufficient numbers of highly qualified students. Where the competition between public and private law schools becomes keen is when students perceive that they can receive an education equal to that obtained in private institutions at a substantially reduced cost. It is at this point that many private institutions may price themselves out of the education market. Marginal institutions, public and private, probably should not survive; but if too many private institutions run into financial difficulties, a substantial threat to the quality and diversity of legal education will occur. An equally unfortunate danger is that access by minorities and the disadvantaged to many of the so-called national law schools might be foreclosed because of increased tuition costs, further enhancing the degree to which such institutions are school for the rich or near-rich.

12. COSTS & RESOURCES, *supra* note 2, at 191-220.

The need for law schools to create a better financial climate for themselves could not come at a worse time. The "new depression" in higher education identified by Earl Cheit in a study for the Carnegie Commission on Higher Education in 1971 has turned into the prolonged depression in 1980.[13] Now higher education in the 1980s is going to face the probability that fewer students will be entering college. This can only exacerbate funding problems for higher education institutions and make it even more difficult on law schools because they already receive such a small percentage of the higher education budgets. The fiscal health of law schools is clearly related to the fiscal health of the mother institutions. Law schools, like undergraduate colleges, are seeing a leveling and even downturn in their applications.[14] This downturn, coupled with the commonly held belief that there are too many lawyers, will make it increasingly difficult to sustain program levels, let alone increase financial support. Yet something must be done.

We believe that law schools must seek higher levels and additional sources of funding. Obviously, the role of the tuition base will continue to be important in financing legal education. Now, new ways of helping to pay that tuition must be found. Law schools and legal education entities, such as the American Bar Association and the Association of American Law Schools, must seek greater support for direct financial assistance to law students in the forms of grants, scholarships, and loans. If law schools remain essentially "pay as you go" institutions without increased opportunity for direct financial help from governmental sources, then access to the profession will become even more limited.

Except for the Council on Legal Education for Professional Responsibility (CLEPR), law schools have been singularly unsuccessful in attracting gifts or interest from private foundations.[15] The success of the CLEPR "seed grant" for clinical legal education has demonstrated the ability of law schools to respond to new proposals and make good use of foundation support. Law schools should seek additional support for innovative programs and encourage philanthropic groups to establish a foundation for direct support of legal education programs and research.

To suggest that private giving from all sources must be encouraged is self-evident. Law schools, generally speaking, have not done a very good job in attracting private gifts. The major source of those gifts should be lawyers.

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13. CHEIT, *supra* note 2; Chambers, *Appropriation 1979-80* (Nat'l Assoc. of State U. and Colleges 1979).
14. White, *supra* note 8.
15. PACKER & EHRLICH, *supra* note 2, at 65.

Members of the legal profession must be educated to give to the schools of their choice. It should become a matter of professional responsibility to respond to the needs of the law schools. Charity should begin at home. Not only should lawyers support such giving campaigns, but they also should encourage others to do so. Lawyers are in an almost unique position to make others aware of the financial needs of law schools. Ways must also be found to encourage the business community to provide support to legal education institutions. Corporations should be made to realize that "no one has a greater stake in the preservation of a smoothly functioning legal order. . . ."[16]

Law schools must explore additional creative ways to increase their funding bases. One suggestion is to make better use of law school facilities by running a variety of continuing education programs for lawyers. The income from such programs will be welcome, but, equally important, the good will generated will help encourage the profession to make contributions to the law school. Members of the bar should also be encouraged to donate their time to help law school programs, particularly those of a skills training nature requiring close supervision. Law schools should explore opportunities to undertake specific projects for governmental entities which have both an educational and service function, and for which law schools can be reimbursed. These are only examples of a host of opportunities which the Committee encourages law schools to explore to help improve their financial status while at the same time breaking new educational ground.

Finally, law schools must make a better case for increased support from universities. They must be vigorous in pursuing new programs and the support of those programs within the university budget process. It must be made clear that traditional levels of support are no longer viable. In essence, they must make their case like lawyers. At the same time, law schools must act responsibly in a period of educational retrenchment by making better use of those resources made available to them by the university. And, should it become necessary, law schools must do more with less.

16. Manning, *supra* note 1, at 1127.

VI. RECOMMENDATIONS

After due consideration of the data provided by the American Bar Foundation and other data and information, as reviewed in Chapter IV of this Report, and committee deliberations, the following recommendations are made for consideration by the American Bar Association and its House of Delegates and all other persons interested in legal education:

RECOMMENDATIONS TO THE HOUSE OF DELEGATES

1. We recommend that the House of Delegates recommend that the Section of Legal Education and Admissions to the Bar, by its Research Committee or other designee of the Council, consider undertaking a project to identify and conduct field studies of those programs at approved law schools (e.g., trial advocacy instruction, negotiation, interviewing and counseling theory and skills) which have significantly augmented and enhanced the typical law school core curriculum and preparing and disseminating (1) detailed description of the content and format of such programs, (2) evaluative comment as to the effectiveness thereof, and (3) cost analyses of such programs.

2. We recommend that the American Bar Association support the recommendations* on skills training proposed by the Task Force on Lawyer Com-

*Recommendation 3 of the TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS:

> Law schools should provide instruction in those fundamental skills critical to lawyer competence. In addition to being able to analyze legal problems and do legal research, a competent lawyer must be able effectively to write, communicate orally, gather facts, interview, counsel, and negotiate. Certain more specialized skills are also important for many law graduates.
>
> Law schools should provide every student at least one rigorous legal writing experience in each year of law study. They should provide all students instruction in such fundamental skills as: oral communication, interviewing, counseling, and negotiation. Law schools should also offer instruction in litigation skills to all students desiring it.

Recommendation 8 of the TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS:

> Law schools should experiment with schedules that provide opportunity for periods of intensive instruction in fundamental lawyer skills.

petency: The Role of the Law Schools of the American Bar Association's Section on Legal Education and Admissions to the Bar and applaud initial efforts to implement those recommendations already made by law schools.

3. We recommend that the House of Delegates request the American Bar Foundation to consider continuation of research activity in the field of legal education as a permanent component of its research program, with special emphasis on enlarging and building upon the studies already completed.

GENERAL RECOMMENDATIONS OF THE COMMITTEE

4. We recommend that the American Bar Association take the lead in exploring additional and creative funding resources for legal education and in developing methods to obtain such resources.

5. We recommend that the Section on Legal Education and Admissions to the Bar and the Association of American Law Schools confer with the object that the 1953 AALS Statement on Prelegal Education (See Appendix B) be re-examined and rewritten with the goal of providing more clear and concise guidelines for prelaw students. In our view that statement should focus particularly on the need to master, at the undergraduate level, advanced writing skills and effective oral communication. We also believe that prelegal education could include courses that provide a basic understanding of accounting, economics, psychology, and of historical and contemporary social and political processes.

We believe that the legal education community and those responsible for undergraduate liberal education would profit by conferring with one another to see how their complementary educational purposes can best be served.

6. We endorse Recommendation No. 1* of the Task Force on Lawyer Competency: The Role of the Law Schools of the American Bar Association's Section on Legal Education and Admissions to the Bar on the role of

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*Recommendation 1 of the TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS:

> In admitting students, law schools should consider a full range of the qualities and skills important to professional competency. Those law schools that admit students almost exclusively on the basis of a relatively mechanical index of Law School Admission Test score and undergraduate grade point average should give greater weight to such factors as writing ability, ability in oral communication, work habits, interpersonal skills, dependability, and conscientiousness.
>
> Attention to these factors should complement—not undercut—current affirmative action programs, which must be maintained and expanded if the legal profession is to be truly open to all racial and minority groups.

admissions to law school. In addition, we recommend that law schools consider establishing guidelines for admission that assure the achievement of adequate writing ability on the part of those admitted.

7. In order to ensure that legal education is open to all based upon merit, rather than on their ability to pay, we recommend that law schools re-evaluate the adequacy of their respective student financial aid systems.

8. We recommend that every law student have the opportunity for academic and career counseling throughout law school, with particular reference to empirical information derived from ABF and other studies regarding legal education, the practice of law, and the legal profession.

We also recognize that law schools cannot be expected to teach all the skills useful to a practicing lawyer, but through counseling students should be made aware of the value of various skills that may be relevant to the practice of law.

We recommend that law schools re-evaluate teaching materials available for classroom use, particularly in the areas of the administrative process and regulatory law and of legislative process and statutory law.

10. We recommend that law schools be provided sufficient resources to improve dramatically student/faculty ratios in order to increase the availability of a greater number of small classes for students at all levels of the legal education process. We also recommend that additional research focusing on the effect of class size on law school teaching be undertaken.

11. We recommend that law schools remain on a three-year equivalent program with appropriate adjustments made in each institution to meet the recommendations made in this report.

12. We recommend that law schools explore the means for evaluating the impact of workloads (such as those experienced by clinical teachers, if they otherwise meet normal criteria for hiring as law faculty members), on traditional criteria for promotion and tenure, and that appropriate weight be assigned to the effective teaching of legal skills.

13. We recommend that the law school recruitment process for full-time faculty increasingly look to the practicing segment of the profession for its potential faculty members and seek creative ways to attract practitioners to teach, such as "practitioner in residence" programs and law firm sabbatical programs.

14. We recommend that as a part of the faculty development process, law schools provide means for the improvement of pedagogical skills.

15. Recognizing that the past several years have brought substantial developments in continuing legal education, specialized certification programs, and the like, we recommend that addressing the problems of the legal profession should not be limited in law schools to current students, but that the law schools should serve a broader professional educational role. To that end, effective communications between the law schools and the bar should be encouraged.

16. We recommend that as part of the self-study process required by the American Bar Association, that law schools include as members of self-study task forces or committees alumni, other members of the practicing bar, and academicians from other disciplines.

17. We recommend that evaluative research be supported so that new teaching methods and strategies can be developed and evaluated and the results disseminated within the legal education community. We are encouraged by the efforts in this area that have already been undertaken.

APPENDIX A

ABF RESEARCH PROGRAM IN LEGAL EDUCATION

Initiated at the request of the House of Delegates of the American Bar Association, this research program seeks to provide in-depth understanding of the processes and products of legal education previously unavailable to legal educators and the legal profession. Endeavoring to clarify the vital transition from student to lawyer, these studies include the perspectives of the law student, the law faculty, and the legal profession. In addition, a number of projects deal with institutional issues regarding the nature of legal education (e.g., law teaching materials, methods, and educational innovations). This program is under the general direction of Felice J. Levine and Spencer L. Kimball.

Baird, L. L. "A Survey of the Relevance of Legal Training to Law School Graduates." 29 *Journal of Legal Education* 264 (1978).

Barry, K. H., & Connelly, P.A. "Research on Law Students: An Annotated Bibliography." 1978 *ABF Research Journal* 751.

Botein, M. *Videotape in Legal Education: A Study of Its Implications and a Manual for Its Use*. New York: New York Law School 1979.

Boyer, B. B., & Cramton, R. C. "American Legal Education: An Agenda for Research and Reform." 59 *Cornell Law Review* 221 (1974). Reprinted as *ABF Research Contribution, 1974, No. 1.*

Canan-Austin, P., & Kurtz-Phelan, J. L. "Socialization of Lawyers: The Teachers." Paper to be published, 1981; revised manuscript available.

Carlson, A. B., & Werts, C. E. *Relationships Among Law School Predictors, Law School Performance, and Bar Examination Results*. Princeton, New Jersey: Educational Testing Service, September 1976.

Desiderio, R. J. "Counseling of Law Students." Manuscript in preparation for 1981 publication.

Erlanger, H. S. "Young Lawyers and Work in the Public Interest." 1978 *ABF Research Journal* 83.

Erlanger, H. S. & Klegon, D. A. "Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns." 13 *Law & Society Review* 11 (1978). Reprinted as *ABF Research Contribution, 1979, No. 2.*

Fossum, D. "Law Professors: A Profile of the Teaching Branch of the Legal Profession." 1980 *ABF Research Journal* 501.

Fossum, D. "Women Law Professors." 1980 *ABF Research Journal* 903.

Hedegard, J. M. "The Impact of Legal Education: An In-Depth Examination of Career-relevant Interests, Attitudes, and Personality Traits Among First-Year Law Students." 1979 *ABF Research Journal* 791.

Hedegard, J. M. "The Course Perceptions Questionnaire: An Instrument for Measuring Law School Instructional Methods." Paper to be published in forthcoming issue of *ABF Research Journal,* 1981.

Katz, A. N., & Denbeaux, M. "Trust, Cynicism, and Machiavellianism Among Entering First-Year Law Students." 53 *Journal of Urban Law* 397 (1976).

Katz, A. N., & Denbeaux, M. "Alteration or Elaboration: Does Law School Instill Cynicism?" Paper to be published, 1981; revised manuscript available.

Kimball, S. L. "Will the Real Lawyer Please Step Forward?" 2 *Learning and the Law* 30 (1975). Paper presented at the annual meeting of the Association of American Law Schools, San Francisco, December 1974.

Lammers, B. *Legislative Process and Drafting in U.S. Law Schools.* Chicago: American Bar Foundation, 1977.

Levine, F. J., Erlanger, H. S., & Barry, K. H. "The Impact of Legal Education: Comparative Perspectives on Professionalization." Paper to be published in forthcoming issue of *ABF Research Journal,* 1981.

Mazor, L. J. "The Materials of Study in Law School." Manuscript in preparation for book publication, 1981.

Park, R., & Burris, R. "Computer-Aided Instruction in Law: Theories, Techniques, and Trepidations." 1978 *ABF Research Journal* 1.

Pipkin, R. M. "Legal Education: The Consumer's Perspective." 1976 *ABF Research Journal* 1161.

Pipkin, R. M. "Student Responses to Law School Curricula." Paper presented at the annual meeting of the American Bar Association to the Section on Legal Education and Admissions to the Bar, Chicago, August 1977.

Pipkin, R. M. "Law School Instruction in Professional Responsibility: A Curricular Paradox." 1979 *ABF Research Journal* 247.

Pipkin, R. M. "Moonlighting in Law School: Attitudinal and Behavioral Correlates of Part-Time Employment by Full-Time Students." Paper to be published in forthcoming issue of *ABF Research Journal*, 1981.

Pipkin, R. M. "Law Student Activity Patterns." Book in preparation for publication by American Bar Foundation, 1982.

Pipkin, R. M., Stokes, R. G., & Spangler, E. "Contingencies in the Development of Cynicism Among Law Students." Paper presented at the annual meeting of the American Sociological Association, Section on Professions, New York, August 1976.

Powell, R. J. "What Is a Competent Lawyer? Report of a National Survey of Solo and Small Firm Practitioners." Unpublished manuscript, Educational Testing Service, 1977.

Spangler, E., Gordon, M. A. & Pipkin, R. M. "Token Women: An Empirical Test of Kanter's Hypothesis." 84 *American Journal of Sociology* 160 (1978).

Zemans, F. K., & Rosenblum, V. G. "Preparation for the Practice of Law—the Views of the Practicing Bar." 1980 *ABF Research Journal* 1.

Zemans, F. K. & Rosenblum, V. G. *The Making of a Public Profession.* Chicago: American Bar Foundation, 1980.

ABF RELATED RESEARCH ON THE LEGAL PROFESSION

The American Bar Foundation has had a long-standing commitment and interest in studying lawyers, the legal profession and the organized bar. During the past several years a number of studies have yielded publications that also importantly guided the ABA Special Committee for a Study of Legal Education in its work.

Engel, D. M. "The Standardization of Lawyers' Services." 1977 *ABF Research Journal* 817.

Fossum, D. "Law School Accreditation Standards and the Structure of American Legal Education." 1978 *ABF Research Journal* 515.

Heinz, J. P., Laumann, E. O., Cappell, C. L., Halliday, T. C., & Schaalman, M. H. "Diversity, Representation, and Leadership in the Urban Bar: A First Report on a Survey of the Chicago Bar." 1976 *ABF Research Journal* 717.

Heinz, J. P., & Laumann, E. O. "The Legal Profession: Client Interests, Professional Roles, and Social Hierarchies." 76 *Michigan Law Review* 1111 (1978). Reprinted as *ABF Research Contribution, 1979, No. 1.*

Laumann, E. O., & Heinz, J. P. "Specialization and Prestige in the Legal Profession: The Structure of Deference." 1977 *ABF Research Journal* 155.

Laumann, E. O., & Heinz, J. P. "The Organization of Lawyers' Work: Size, Intensity and Co-Practice of the Fields of Law." 1979 *ABF Research Journal* 217.

Maddi, D. L. "Trial Advocacy Competence: The Judicial Perspective." 1978 *ABF Research Journal* 105.

Maddi, D. L. "Judges' Views of Lawyers in Their Courts." 1979 *ABF Research Journal* 689.

Marks, F. R., & Cathcart, D. "Discipline Within the Legal Profession: Is it Self-Regulation?" 1974 *Illinois Law Forum* 193. Reprinted as *ABF Research Contribution, 1974, No. 5.*

Marks, F. R., with Leswing, K., & Fortinsky, B. A. *The Lawyer, the Public, and Professional Responsibility*. Chicago: American Bar Foundation, 1972.

Maru, O. *Research on the Legal Profession: A Review of Work Done.* Chicago: American Bar Foundation, 1972.

Powell, M. "Anatomy of a Counter-Bar Association: The Chicago Council of Lawyers." 1979 *ABF Research Journal* 501.

Rabin, R. L. "Lawyers for Social Change: Perspectives on Public Interest Law." 28 *Stanford Law Review* 207 (1976). Reprinted as *ABF Research Contribution, 1976, No. 1.*

Slovak, J. S. "Working for Corporate Actors: Social Change and Elite Attorneys in Chicago." 1979 *ABF Research Journal* 465.

Slovak, J. S. "Giving and Getting Respect: Prestige and Stratification in a Legal Elite." 1980 *ABF Research Journal* 31.

Steele, E. H., & Nimmer, R. T. "Lawyers, Clients, and Professional Regulation." 1976 *ABF Research Journal* 917.

Zehnle, R. H. *Specialization in the Legal Profession: An Analysis of Current Proposals*. Chicago: American Bar Foundation, 1975.

APPENDIX B

STATEMENT ON PRELEGAL EDUCATION OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS (1953)*

Law schools are necessarily vitally concerned with the quality of the preparation that students entering upon the study of law bring with them from their undergraduate experiences. For unless that preparation has been of high quality, the law schools cannot, in the additional time they can fairly require of their students, equip them for satisfactory performance within the legal profession and the democratic community.

The Association's responsibility in matters of prelegal education cannot best be met by prescribing certain courses and extracurricular activities for students planning later to study law. Such an endeavor is foreclosed by the wide range for choice of relevant prelaw preparation. More important, any attempt to prescribe a single course of preparatory work would be invalidated by the fact that the quality of instruction necessarily varies among subject-matter areas and among schools. In one negative respect, however, courses should be mentioned specifically. So-called "law" courses in undergraduate instruction should not be taken for the purpose of learning "the law." They are not intended, and are not likely to be effective, as education for lawyers, although they can be very helpful in undergraduate curricula for teaching students "about law" and quite possibly for helping students estimate whether they might be interested in law study.

But while it considers the prescription of particular courses unwise, the Association can properly call attention to the quality of undergraduate instruction it believes fundamental to the later attainment of legal competence. That quality of education is concerned with the development in prelaw students of basic skills and insights. It thus involves education for:

- comprehension and expression in words;
- critical understanding of the human institutions and values with which the law deals;
- creative power in thinking.

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The development of these fundamental capacities is not the monopoly of any one subject-matter area, department, or division. Rather, their development is the result of a highly individualized process pursued with high purpose and intensive intellectual effort by persons with at least a reasonable degree of native intelligence. Perhaps the most important variable ingredient of a proper climate for this process is the quality of undergraduate instruction. Certainly it is not any particular course or combination of courses. Shortly stated, what the law schools seek in their entering students is not accomplishment in mere memorization but accomplishment in understanding, the capacity to think for themselves, and the ability to express their thoughts with clarity and force.

RECOMMENDED PRELAW PROGRAM

Education for Comprehension and Expression in Words

The purpose here is to gain both perception and skill in the English language. Language is the lawyer's working tool. He or she must be able, in the drafting of legal instruments, to convey meaning clearly and effectively. In oral and written advocacy he or she must be capable of communicating ideas convincingly and concisely. In reception no less than in expression, language is fundamental as the lawyer's medium of communication. For the lawyer must be able to grasp the exact meaning of factual statements and legal instruments, to catch the fine points of legal reasoning and argument, and to comprehend the technical materials that constitute the body of the law. To acquire sufficient capacity for communication calls for extensive practice in all phases of the art. Truly, the law-trained man or woman, to perform effectively the tasks expected, must be a precisionist in the use of language.

What is needed, therefore, is the skill that can be obtained only through practice in:

Expression—adequate vocabulary, familiarity with modern usage, grammatical correctness, organized presentation, conciseness and clarity of statement in writing and speaking.

Comprehension—concentration and effective recollection in reading and listening, perception of meaning conveyed by verbal symbols.

Both expression and comprehension also require a developed sensitivity to:

Fluidity of language—varying meanings of words in different times and contexts, shades of meaning, interpretive problems, hazards in use of ambiguous terms.

Deceptiveness of language—emotionally charged words, catch phrases, hidden meanings of words, empty generalizations.

Education for Critical Understanding of Human Institutions and Values

The purpose here is to develop insight into, rather than merely information about, the institutions and values with which man is concerned. One pursuing a legal career encounters all sorts of these institutions under circumstances in which his or her conduct necessarily shapes the conduct of others in their value choices: examples are marriage and the conduct of parties to it; business and the actions of sellers and buyers, stockholders and directors, employers and employees; government and individuals concerned with or subject to taxation, regulation of trade practices, and development of atomic energy; private property and its protection and utilization. The lawyer is a force in the operation and shaping of these institutions. It is vital that he or she perform with a consciousness that the lawyer's conduct counts in the choice of preferable means and ends. This insight comes from intensive study for a substantial period of such of the following areas as may feasibly be undertaken, rather than from attempts to skim all the large areas listed. Such study includes dealing with people in these contexts and reflecting upon the experience thus gained.

Important to the gaining of this insight would be a grasp of:

The nature of man and the physical world of which he is a part—stimuli that move him to action, internal and external limitations upon the development of understanding and reason, man's ability to plan conduct and the function of value choices in his planning.

The economic systems of societies—theoretical foundations, imperfections in practice, business patterns, the function of governmental process in economic control.

The political organizations of societies—basic theories, modern complexities, the relation of politics to law.

The democratic processes in Western societies, especially—responsiveness of governmental policy to popular will, art of compromise, role of education and discussion, functions of majorities and minorities, methods of reconciling competing interests, requirements for participating effectively in world society, degree of efficiency self-government permits, awareness of the moral values inherent in these processes.

The social structures of societies—functions of individuals and groups such as the family and churches, implications of the service state, governmental processes in social control, control of the atypical person.

The cultural heritage of Western societies, including philosophy and ethics—freedom for the individual; traditions of humility, brotherhood, and service; inevitability of change and the art of peaceful, orderly adaptation to change.

Education for Creative Power in Thinking

The purpose here is to develop a power to think clearly, carefully, and independently. A large part of the work law-trained people are called upon to do calls for problem solving and sound judgment. This is true regardless of whether they devote their lives to the practice of law, to governmental administration, or to being a judge, legislator, teacher, or scholar, or to some other endeavor. They will be called upon to create or give advice concerning an almost infinite number of relationships. These relationships may range from a comparatively simple contract between a buyer and seller of goods through tailoring a highly complex corporate structure to the needs of a business or nonprofit organization. Any assigned task can be done better by one who possesses this power of creative thinking. Predicting the outcome of even routine litigation may involve considering whether a hitherto well-settled rule of law that is applicable would, in the light of the particular facts of the case, possibly be modified or reshaped to avoid unfairness and practical inconvenience. Here, the power to think creatively will often merge with critical understanding of human institutions and values, with the latter serving as the necessary threshold to creative power.

Creative power in thinking requires the development of skill in:

Research—awareness of sources and types of material, adaptation to particular use, methods of fact presentation.

Fact completeness—willingness to recognize all facts, avoidance of preconception and fiction masquerading as fact, disciplined ability to withhold judgment until all facts are relayed.

Fact differentiation—relevance of facts to particular issues, varying importance of different facts, relative persuasiveness of various facts.

Fact marshalling—reduction of masses of fact to manageable proportions, arrangement of facts in logical and convincing order.

Deductive reasoning—use of the syllogism, spotting logical fallacies, avoiding conclusions flowing from inaccurate premises.

Inductive reasoning—experimental methodology, accuracy of observation, elimination of variables, role of hypotheses, conditions essential to valid generalization such as adequacy of sampling, strict limitation of conclusions by available reliable data.

Reasoning by analogy—methods of classification, gradations of relationship, finding resemblances that justify inferences of similarity.

Critical analysis—disciplined skepticism in approach, thoroughness of inquiry, keenness of mind in cutting through to essentials.

Constructive synthesis—systematic formulation of principles, meaningful organization of ideas, structural relationships of concepts.

Power of decision—resolution of discoverable issues in the light of short- and long-term ends found preferable on explicitly identified and justified grounds.

With the foregoing in mind, the application of the above objectives and recommended prelegal program in the light of their controlling principles and limitations can be suggested briefly. A particular undergraduate student's reasoning processes may better be developed at a particular institution, for example, by work with a specified teacher of biology than with another teacher of logic; his or her understanding of cultural heritages may be deepened more by some available courses in literature than by others in religion; his or her facility in comprehension and expression in language conceivably strengthened as much or more by work with a history teacher as by some studies in speech or English composition; and his or her capacity for the handling of facts increased as well by the study of zoology as by the study of sociology, all according to the circumstances obtaining at the particular college and the background of the individual student. In sum, the program of prelegal education earnestly suggested is to be secured through such courses and other work as the student's vital interests, the counselor's judgment as to the quality of instruction, and the facilities of the particular undergraduate school or college dictate in each individual case, considering the development of the student as of the time relevant decisions as to the prelegal program are to be carried out.

APPLYING THE STATEMENT TODAY

Although more than two decades have passed since the AALS statement was adopted, it continues to reflect the views of most legal educators. It is not a "cop-out" when prelaw advisers and law professors say that they cannot recommend a single "best" preparation for law school. The following section-by-section analysis of some areas of the curriculum tries to apply the philosophy of the AALS statement to specific course areas to illustrate relevant considerations. Prospective law students may apply the AALS statement to other areas of the curriculum since these lists are not intended as endorsements or exclusion of other areas.

COMMUNICATIONS, ENGLISH, SPEECH, AND LANGUAGES

The lawyer must be able to communicate effectively in oral and written expression. Both the formal role of the lawyer—in court, legislature, and administrative agency—and the informal roles of counselor and negotiator demand the highest skills of expression. To master English one may find it helpful to study foreign languages and speech and to debate. An appreciation of the variety of good style may be gained by formal courses in the analysis of literature; but, above all, one must write and speak. One learns to write by writing; to speak by speaking. There is no substitute for careful drafting and meticulous redrafting, whether the medium be a letter home or a thesis on genetic mutation. Intercollegiate debate can be an excellent training ground. A love of language must be cultivated, but once developed, it supplies a lifetime of pleasure and power. The love of words should not be taken as love of wordiness. The goal should be precision and economy in style—the right word and no more.

On the inevitable question of studying Latin: as a form of training in the analysis of language structure and as an integral part of the classical education, Latin—as well as other languages—is very valuable. However, the knowledge of Latin as such is of no special value to the law student. Again, working with words is the key to the lawyer and to the extent that studying languages creates a precise appreciation and understanding of the structure of thought through words, there could be few more valuable subjects for study.

HISTORY

Most lawyers would accept as a truism Justice Holmes' remark that the life of the law has not been logic but experience. Historical study allows the thoughtful organization of human experience so as to assist understanding. In legal life, as in all life, man is largely what he was. Dreams, hopes, and possibilities for tomorrow are conditioned by yesterday, and a law cut adrift from the historical moorings of a culture is a law without a compass. Law is organic, the product of a specific time and an actual place. However brilliant and progressive the design, if law fails to accommodate itself to the spirit of its people, it is in constant danger of being merely an irrelevant ornament.

We should make it clear that the history relevant to law is the history not only of Western society but of all of civilization. A modern society scarcely can afford in its legal life to take a view that excludes half the world. This

suggests also the importance of academic work in international affairs, a study that may be thought of either as a part of history or political science or as a separate discipline. In any event, it is a proper study as preparation for law. A separate, distinct justification for the study of history is sometimes offered. Law students often encounter concepts that are intelligible only in terms of their historical roots. Aspects of constitutional law are of this character.

PHILOSOPHY

Man's concern about the ultimate nature and meaning of mind, soul, and matter can scarcely be unimportant for law. Within the traditional subdivisions of philosophy—ontology, logic, and ethics—logic and ethics are, of course, the nearest to the daily concern of the law as a practical calling. Many would be inclined to say that ethics is what law is about. Whether this is a defensible position, at least it is true that ethics and law deal with many of the same problems. A sensitivity to the enduring questions of personal and public morality forms an appropriate backdrop for the consideration of legal issues. Perhaps of even greater importance is the training in understanding abstractions. The free and spirited consideration of philosophical questions is almost the classic model for legal training.

LOGIC, MATHEMATICS, AND LEGAL DECISIONS

The study of logic and mathematics is regarded as excellent prelaw work because it provides training in the process of reasoning. Lawyers do not inhabit a world filled with clear and distinct rules suitable for manipulation in the manner of mathematical equations. Lawyers need to communicate with experts. They need the ability to understand and appreciate the structure and approach of other disciplines. Not only must lawyers be able to deal with experts, but they must also be able to read critically and to utilize technical materials in other fields. With logic as a tool, the legal machine often appears to digest the facts of a given problem, manipulate them, and disgorge tidy answers. This simply is not the case. In legal reasoning, logic is not an automatic, easily flowing decision-producing tool. Legal decision making is a complex social phenomenon. Like all descriptions of fact, it may be ambiguous for at least two reasons and probably more. The first reason is the frailty of human judgment. The second is the frailty of human expression. These limitations are not exclusive to law.

Because logic is part of a lawyer's necessary equipment, its mastery should be pursued in whatever context possible. One prepares for legal decision

making in the same manner one would for any intellectual undertaking requiring careful inference. Traditional courses in logic may be useful, mathematics is often suggested as helpful, and a devotion to complicated puzzles may add even another perspective. These disciplines emphasize the raw power of inference. They do not, however, supply the plasticity and ambiguity of fact and theory that make legal inference a different experience. For this, only the richness of verbal symbols, found in every corner of the curriculum, provides analogies.

ECONOMICS

Significant numbers of legal questions ultimately involve economic issues. Antitrust law, for example, is designed to express the nation's economic policy concerning business competition. Furthermore, economics as a science is an exacting discipline that calls upon the student to master patterns of thought and to explore questions of causation and to probe potentials for solutions. The use of symbols and systems in economics can be especially valuable to prospective lawyers. The understanding of economic data frequently requires an understanding of statistics.

THE SOCIAL SCIENCES

The interaction of law and social science is something with which the law student will want more than a passing familiarity. Ideally, this would include exposure to the methodology of the social sciences, including some statistics; the student should be equipped to exercise some critical judgment upon claims advanced by social scientists whether in economics, political science, sociology, psychology, or anthropology.

Law is a social science. The other social sciences are vital to law, since law is preoccupied with human behavior and its implications. Law, like other social sciences, seeks information and generates data in enormous quantities in the course of judicial, legislative, and administrative decision making. The law seeks only what is important to a circumscribed inquiry, such as the need for restraint upon business monopoly or the identification of a murder weapon. Extraneous information, however interesting, is not relevant. The *relevant* pervades the law. You will learn its enormous power as its spirit is invoked again and again by your law school instructors. It suggests the law's constant concern with *limited* human purposes—the settlement of a dispute over a will, the award of a missile contract, the adoption of a child. Law does not take all learning as its province, but that alone which is germane to a specific question.

An enormous range of legal issues requires information from the social sciences for its intelligent resolution. The examples just given invoke the spectrum of the social sciences. A will contest involves potentially the major policy question of economics and sociology of how much society wishes to encourage the unity of the nuclear family through the inheritance system. It may also involve the complex factual problem of demonstrating the intent of a dead person—a question on which psychiatry may be consulted. The missile contract and adoption cases likewise are alive with actual or potential questions on which the social sciences may shed light.

SCIENCE AND ENGINEERING

Most law classes include a number of students who have concentrated in college in the sciences and engineering. The traditional rigor of the training provided and the precision demanded in these fields guarantee that these students will have engaged in critical thinking before arrival at law school. This education also promotes the kind of "fact consciousness" that should be part of every lawyer's makeup. Furthermore, this training often puts the lawyer in touch with computer technology, which is becoming more important to the understanding and solution of many legal and social problems. There is, however, a risk. Where concentration upon science has preempted entirely the student's attention in college, he or she may be deficient in skills of communication and in exposure to the general culture.

The increased technology of modern society is such that legal issues often involve complex scientific and engineering questions. Knowledge of physical and biological science as well as engineering increases the lawyer's ability to deal with important questions. Thus, those with an understanding of law and a scientific and engineering background are often in demand in traditional fields such as patent law and in such growing areas as environmental law.

ACCOUNTING

As a practical study, accounting is a field that lawyers must appreciate, since it is in many aspects the language of business. Prospective law students would be wise to learn basic accounting in college and certainly should be required to master at least its rudiments in law school.

COMPUTER SCIENCE

Lawyers have adapted more slowly than many to the new technologies of information retrieval, communication, and document preparation. One can do very well in law school with no knowledge of computers, but this knowl-

edge will affect legal work and research increasingly. The law student who has some understanding of this art will be better equipped for work in the 1980s and beyond. The so-called knowledge explosion and the expanding volume of case law make the computer an important tool for lawyers. Also, to understand much scientific research one must understand computers.

NONACADEMIC AND WORK EXPERIENCES

Prospective lawyers should also know of a nonacademic development in prelaw preparation that may have increasing significance. More and more of those entering law school do so after spending time away from formal academic activity. After college they go to the Peace Corps or VISTA, to military service, to teaching or business, to skilled and manual jobs or factory labor or travel. They enter law school a year or two later. The time away from study may not result in better grades but is likely to make students more purposeful and, quite possibly, better and more understanding lawyers upon law school graduation. Law school is a new and quite different academic challenge; those who do not come to legal education directly from sixteen or more years of formal education seem more ready to treat the experience as such. Their work experience will very probably increase their understanding of the institutions that are the subjects of their law study.